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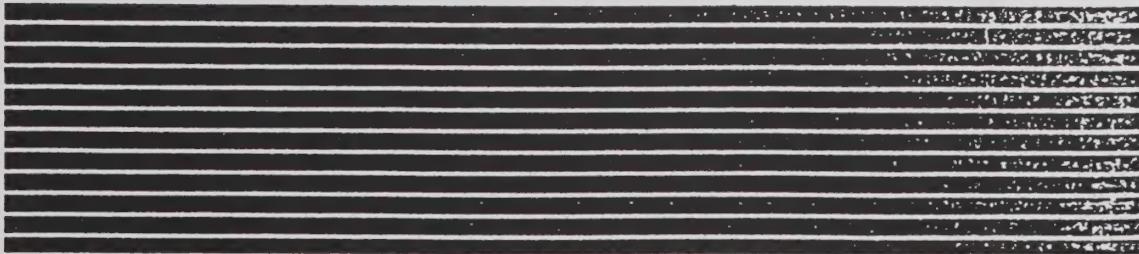
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DISPARITY STUDY

OAKLAND, CALIFORNIA

Mino

City and Redevelopment Agency



June 1996

MASON HILLMAN
ASSOCIATES LTD.



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INTRODUCTION

This Disparity Study Report examines the experiences of minority- and woman-owned businesses (M/WBEs) located within the City of Oakland and the Redevelopment Agency's market area (the "City"). The goal of this study is to determine whether identified systemic racial and gender discrimination against minority and woman business enterprises is present in the City's market area and to identify the barriers faced by these businesses.

This report is a companion to the Port of Oakland disparity study report. The two documents share three sections — the Disparity Study Legal Framework, the Oral History Analysis, and the Race-Neutral Methods for Reducing Contracting Barriers. The balance of the report sections are unique to this City study report.

In 1989 the United States Supreme Court, through its decision in *City of Richmond v. J. A. Croson Co.*, defined the standard of evidence that local government entities must demonstrate before enacting race-conscious business affirmative action programs. The City of Oakland and the Redevelopment Agency commissioned Mason Tillman Associates to assess whether the requisite factual conditions exist, pursuant to the *Croson* guidelines, to justify the continuation of a M/WBE program.

During the course of the study another seminal decision was rendered in *Adarand Constructors v. Frederico Pena*.¹ Decided in June 1995, *Adarand* set the standard for the review of federal programs. The implications of *Adarand* will not be fully appreciated until federal programs are reviewed under the standard of strict scrutiny. However, the framework of analysis that has developed in response to the Supreme Court's ruling in *Croson* is relevant and instructive with regard to federal programs as well as state and local programs funded with federal appropriations.

This report covers the following scope: definition of the City's market area; assessment of availability and utilization of minority- and woman-owned businesses within the market area; analysis of the statistical data to determine whether a statistically significant disparity exists between the availability of M/WBEs and their utilization in construction and construction - related contracting and the purchasing of goods and services; collection and analysis of anecdotal data to determine whether it can illuminate the findings within the market area; and, program recommendations based on both statistical and anecdotal evidence obtained in this study.

This report is divided into five parts. Part One summarizes the legal framework provided by *Croson* and its progeny. Part Two describes the M/WBE Program that the City and Redevelopment Agency are currently operating to increase the participation of minorities and women in its contracts. Part Three presents the statistical analysis and disparity in the City's

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32 L.Ed.2d 158 (1995)

market area. Part Three also presents the results of a survey to determine the capacity of businesses in Alameda County. Part Four presents the anecdotal evidence provided by oral history interviews with M/WBEs and results of the expenditure survey. Part Five presents specific program recommendations based on the evidence amassed in this study.

This Disparity Study Report is a result of the efforts of the following persons: Eleanor Ramsey, Ph.D., Project Manager, Gloria A. Wheatley, M.A., Assistant Project Manager, Debra Lawson, Esq., Legal Analyst, Michael Leong, M.A., Statistician, and Shanti Bright, B.A. and Karen R. Fisher, Esq., Researchers. All aspects of the report were coordinated with City of Oakland and Redevelopment Agency staff.

1

DISPARITY STUDY LEGAL FRAMEWORK

I. OVERVIEW

The United States Supreme Court held in its most recent opinion concerning affirmative action, *Adarand Constructors, Inc. v. Frederico Pena*, June 12, 1995¹, that federal affirmative action programs which incorporate racial classifications must adhere to the strict standard applied to local programs in *City of Richmond v. J.A. Croson Co.*² In essence, no government may impose racial classifications to remedy past discrimination unless there is a showing of both a "compelling interest" for doing so, and unless the remedial programs are narrowly tailored for minimal intrusion³ on the economic opportunities of non-minorities.⁴ Hence, it is no longer possible for government bodies to justify programs designed to benefit minorities as a distinct class based solely on notions of equity and generalized assertions of discrimination.

As *Croson* demonstrated and lower federal courts confirmed, the constitutional fate of contemporary business affirmative action programs turns not only on the substance of the remedial measures adopted, but also on the quality of the facts believed to substantiate their

¹ 32 L.Ed 2d 158 (1995)

² 488 U.S. 469 (1989).

³ The Supreme Court has recently clarified that a contractor who challenges a minority preference contract scheme on equal protection grounds need not show that it would have received a contract absent the city ordinance. *Northeastern Fla. Chapter of the Associated Gen. Contractors of America v. Jacksonville*, 113 S.Ct. 2297,2299 (1993). The Court explained that, so long as the non-minority contractor can show that it was "able and ready to bid" on a contract subject to the ordinance, the requisite "injury in fact" under Article III arises from an inability to "compete [with minority contractors] on an equal footing" due to the ordinance's discriminatory policy.

⁴ Neither *Adarand* nor *Croson* address the requirements that state and local governments must satisfy in fashioning remedial programs for other categories of business people, e.g., women and the disabled. As discussed later, lower court cases have spoken to this issue.

necessity.⁵ An understanding of the implications arising from these cases is critical to the development and implementation of programs capable of surviving the intense examination required by strict scrutiny.

This section of the Study introduces the current legal requirements for MBE programs. The analysis begins with a discussion of current law as presented by the *Croson* decision, and seeks to anticipate how relevant considerations have evolved as the lower courts continue to grapple with *Croson*'s ramifications in contingent factual settings. Where appropriate, the *Adarand* decision will be discussed.

Finally, two preliminary caveats are appropriate at the outset of this analysis. First, it is impossible to predict with precision whether evidence gathered about a particular jurisdiction and its market area will satisfy the Court's evidentiary requisites for permitting a remedial business program. Nevertheless, as the discussion below demonstrates, there are guidelines for what would satisfy a majority of the Court. Second, since *Croson* was only decided in 1989, the decision's full impact will not be known until more lower courts have had a chance to apply *Croson*'s framework to a variety of factual scenarios. The City and Redevelopment Agency must therefore monitor future developments and anticipate further clarification of these principles by the courts.

II. CROSON

The *City of Richmond v. J.A. Croson* represented the first case in which the Supreme Court applied strict scrutiny to an affirmative action program without regard to whether the program's purpose was remedial or benign. In *Croson*, J.A. Croson Co. was a sole bidder for a City of Richmond contract. A City ordinance required that non-minority prime contractors award 30 percent of the dollar amount of each contract to one or more MBEs. Croson applied for and was denied a waiver. He lost the contract because he failed to comply with the ordinance. Croson filed suit challenging the constitutionality of the plan under the Equal Protection Clause of the Fourteenth Amendment. Reasoning that "classifications based on race carry a danger of stigmatic harm" that may "promote notions of racial inferiority and lead to a politics of racial hostility," the Supreme Court held that "benign or remedial" uses of race were subject to the same high level of judicial review — "strict scrutiny" — as uses which are clearly malign.⁶

⁵ See *O'Donnell Constr. Co. v. District of Columbia*, 963 F.2d 420 (D.C. Cir. 1992) and *Contractors Ass'n of Eastern Pennsylvania v. City of Philadelphia*, 735 F.Supp. ____ (E.D. Pa. 1995) for examples of findings of inadequate factual predicates and improper remedial measures

⁶ 488 U.S. at 494-98

Applying a strict standard of scrutiny, the Court affirmed the Fourth Circuit's holding that the City of Richmond's ordinance failed both prongs of the strict scrutiny test and violated the Equal Protection Clause of the Fourteenth Amendment. The Court found that the City's rationale for the ordinance was based on speculation and generalized assertions,⁷ and held that Richmond "failed to demonstrate a compelling interest in apportioning public contracting opportunities on the basis of race;" in other words, the City of Richmond failed to establish a sufficient factual predicate based on "identified discrimination in the Richmond construction industry."⁸ Consequently, the ordinance failed the second prong of the analysis by default. Because the ordinance was found not to be predicated on "identified discrimination," the Court noted that "it is almost impossible to assess whether the Richmond Plan is narrowly tailored to remedy prior discrimination."⁹ The Court also commented that Richmond did not consider race-neutral solutions, and established its 30 percent quota based on a "completely unrealistic assumption" that a low incidence of minority construction firms is evidence of discrimination.¹⁰

The Court concluded its analysis of *Croson* by acknowledging that "[n]othing we say today precludes a state or local entity from taking action to rectify the effects of identified discrimination within its jurisdiction."¹¹ The Court specifically cited the following situations as potential justifications for remedial racial classifications: industry-wide systematic exclusion, "significant statistical disparity" between the number employed and the qualified workforce, as well as evidence demonstrating patterns of discrimination.

In summary, the Court did not preclude the implementation of MBE programs by imposing a higher level of scrutiny. Rather, *Croson* requires only that racial classifications adopted by governmental entities be sufficiently supported by "proper findings" which are "necessary to define both the scope of the injury and the extent of the remedy necessary to cure its effects."¹² Furthermore, *in dicta*, the Court set forth guidelines for crafting MBE programs both in its criticism of the evidence provided in *Croson* and its closing discussion of situations where remedial racial classifications may be justified.

⁷ *Id.* at 499 and 500.

⁸ *Id.* at 505.

⁹ *Id.* at 507.

¹⁰ *Id.*

¹¹ *Id.* at 509

¹² 488 U.S. at 511

There is little consensus among legal scholars on the implications of *Croson*.¹³ By contrast, with a few important exceptions,¹⁴ the federal Circuit Courts of Appeals and district courts have forged a surprising degree of unanimity on *Croson*'s mandates. In two important cases, *Coral Construction Co. v. King County*¹⁵ and *Associated General Contractors of California (AGCC) v. City and County of San Francisco*,¹⁶ the Ninth Circuit Court of Appeals has elaborated significantly on *Croson*'s ramifications, and these delineations have set a precedent for other Circuits endeavoring to apply *Croson*. The opinions of other Circuits are likewise instructive, and their teachings are set forth in Part IV below.

III. STANDARDS OF REVIEW

The Supreme Court has been grappling with the Constitution's application to governmental programs that employ racial classifications for benign or remedial uses since the 1970s.¹⁷ It was not until *Croson* that the Court finally adopted "strict scrutiny" as the standard governing judicial review of such programs at the state and local level. Then, in June of 1995, the United States Supreme Court ruled that strict scrutiny was the appropriate standard of review for federal programs as well.¹⁸

Strict scrutiny review has often been called "strict in theory, but fatal in fact"¹⁹ because of its exacting standards. Specifically, the legislation under examination must be justified by a showing that it is necessary to *remedy identified discrimination* in the enacting jurisdiction's area, and that it does so in a manner that is minimally burdensome for disfavored groups. Additionally, the deference that courts usually give to legislation does

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See "Constitutional Scholars' Statement on Affirmative Action after *City of Richmond v. J.A. Croson Co.*," 98 *Yale Law Journal* 1711 (1989); Fried, "Affirmative Action after *City of Richmond v. J.A. Croson Co.*: A Response to the Scholars' Statement," 99 *Yale Law Journal* 155 (1989); "Scholars' Reply to Professor Fried," 99 *Yale Law Journal* 163 (1989); Rosenfeld, "Decoding *Richmond Affirmative Action* and the Elusive Meaning of Constitutional Equality," 87 *Michigan Law Review* 1729 (1989); "Economics of Discrimination: Three Fallacies of *Croson*," 100 *Yale Law Journal* 1033 (1991).

¹⁴

For example, although both the Sixth and Ninth Circuits agree that the intermediate test is the proper one for gender-based remedial programs, these same Circuits diverge on whether evidence of governmental discrimination against women is required to establish an "important governmental interest" to justify such programs. Compare *Coral Construction v. King County*, 941 F.2d 910, 932 (9th Cir. 1991) (no evidence of either active or passive government discrimination necessary) with *Michigan Road Builders Ass'n v. Milliken*, 834 F.2d 583, 595 (6th Cir. 1987), aff'd mem. 489 U.S. 1061 (1989). Additionally, while the Ninth Circuit holds that a jurisdiction need only have in good faith "considered" race-neutral measures before implementing race-conscious ones, see *Coral Construction*, 941 F.2d at 923, the Third Circuit appears to hold that the jurisdiction actually have unsuccessfully attempted the use of such measures before adopting race-conscious methods. See CAEP, 6 F.3d 990, 1008 (3d Cir. 1993).

¹⁵

941 F.2d 910 (9th Cir. 1991), cert. denied, 112 S.Ct 875 (1992).

¹⁶

950 F.2d 1401 (9th Cir. 1991), cert. denied, 112 S.Ct 1670 (1992).

¹⁷

See, e.g., the opinion of Justice Powell for the pluralities in *University of California Regents v. Bakke*, 438 U.S. 265 (1978), and *Wygant v. Jackson Bd. of Education*, 476 U.S. 267 (1986).

¹⁸

See, *Adarand Constructors, Inc. v. Federico Pena*, 1995 WL 347345 (U.S.) (The case was remanded to the District Court for a finding on the merits)

¹⁹

Fullilove v. Klutznick, 448 U.S. 448, 518-519 (1980) (Marshall, J., concurring)

not apply when a “suspect classification” is involved, and the court will instead inquire into the motives behind the enactment of such legislation.²⁰

It is important to keep in mind that *Croson* does not speak at all to the proper standard to be used in the judicial review of governmental programs designed to assist women-owned business enterprises (WBEs). As the Ninth Circuit has observed, distinctions based on gender do not implicate a “suspect classification” for the purposes of Equal Protection analysis, and therefore do not warrant as strict a review as racial classifications.²¹

For this reason, the following discussion of the specific evidentiary requirements of *Croson* will distinguish race-conscious remedial programs and those designed to distribute benefits on a basis other than race.

A. *Minority Business Enterprise Programs: Strict Scrutiny*

1. First Requirement: The Government must demonstrate a *compelling interest* in eradicating the effects of past discrimination.

To establish a “compelling interest” in eradicating the effects of prior discrimination, a city must identify prior discrimination with particularity;²² only a particularized factual predicate can constitute a “strong basis in evidence” justifying the use of racial classifications.²³ In *Croson*, the Court concluded that the Richmond plan suffered from a defective factual basis because it was based on evidence of societal discrimination. The Supreme Court stated that societal discrimination is too amorphous a basis for imposing a racially classified remedy. The City of Richmond had relied on generalized assertions that there had been past discrimination in the entire construction industry. The Court criticized this evidence as too nebulous and as providing no guidance for determining the scope of the injury.²⁴

2. Second Requirement: The MBE program must be *narrowly tailored* to rectify the identified discrimination within the government’s jurisdiction.

The Supreme Court could not evaluate the relationship between the Richmond Plan and the alleged discrimination upon which it was based, because the Court found that the Plan was

²⁰ *Croson*, 488 U.S. 494.

²¹ *Associated General Contractors v. City and Co. of San Francisco*, 813 F.2d 922, 941-42 (9th Cir. 1987). Unlike racial classifications, which must be “narrowly” tailored to the government’s objective, e.g., *Wygant*, 106 S.Ct. at 1850 (plurality opinion); *Fullilove*, 448 U.S. at 480, 100 S.Ct. at 2775-76 (opinion of Burger, C.J.), there is no requirement that gender-based statutes be “drawn as precisely as [they] might have been.” *Michael M.*, 450 U.S. at 4723, 101 S.Ct. at 1206 (1980) (plurality opinion).

²² *Id.*

²³ *Croson*, 488 U.S. at 500

²⁴ *Id.* at 505

not linked to identified discrimination.²⁵ As a result, the Court limited its discussion to two observations. First, the Court found no evidence that Richmond had considered the use of race-neutral means to increase minority participation in city contracting.²⁶ Second, the Court said the 30 percent quota was not narrowly tailored to any goals, except perhaps outright racial balancing. The Court criticized the quota as assuming that “minorities [would] choose a construction trade in lockstep proportion to minority representation in the local population.”²⁷ There was no inquiry into whether the particular MBE seeking a racial preference had suffered from the effects of past discrimination by the City or other contractors.²⁸

B. Woman-owned Business Enterprise, Local Business Enterprise, and Disabled Business Enterprise Programs

Croson is silent with respect to the appropriate standard by which to judge the constitutionality of Woman-owned Business Enterprise, Local Business Enterprise (LBE), and Disabled Business Enterprise (DBE) programs. Lower courts have articulated the following standards for each classification:

1. Woman-owned Business Enterprises: The program must be *substantially related* to an *important government interest*.

The Ninth Circuit, in *Coral Construction*, ruled that WBE programs must be “substantially related” to “important governmental objectives.”²⁹ Thus, while an MBE program would only survive constitutional scrutiny by demonstrating a pattern and practice of systemic racial exclusion or discrimination,³⁰ a WBE program would survive constitutional scrutiny merely by showing that women face particular disadvantages in an industry as a result of their gender.³¹ Other Circuits have likewise ruled that WBE programs pass constitutional muster with less exacting scrutiny than MBE programs.³²

²⁵ *Id.* at 507.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* at 508.

²⁹ *Coral Construction*, 941 F.2d at 930-931.

³⁰ *Croson*, 488 U.S. at 409

³¹ *Coral Construction*, 941 F.2d at 931-932.

³² See, e.g., *Contractors Ass'n of Eastern Pa., Inc. v. City of Philadelphia*, 6 F.3d 990 (3d Cir 1993).

2. Local Business Enterprise Programs: Preferences must address *economic disadvantages related to operating locally*.

Regarding LBE programs, the Ninth Circuit has ruled that a local entity may give a preference to local businesses to address the economic disadvantages faced by these businesses in doing business with the City or County within which the local entity operates.³³ In *AGCC I*, a pre-*Croson* case, the City of San Francisco undertook a detailed study of the economic disadvantages faced by local businesses located within, compared with those located outside of, San Francisco. The study found that businesses located within the City are at a competitive disadvantage with businesses from other areas when seeking to contract with the City because of higher administrative costs of doing business within the City. Such costs included higher taxes, higher rents, higher wages, higher insurance rates, and higher benefits for labor. In upholding the LBE Ordinance, the Ninth Circuit held that "...the City may rationally allocate its own funds to ameliorate disadvantages suffered by local business, particularly where the City itself creates some of the disadvantages."³⁴

3. Disabled Business Enterprise Programs: The program must be *rationally related to a legitimate government purpose*.

The Third Circuit, in a recent opinion, has ruled that affirmative action programs giving preference to disabled businesses will survive constitutional scrutiny if they are "rationally related to a legitimate government purpose."³⁵ In *Contractors Ass'n of Eastern Pa., Inc.*, the Third Circuit found that the City of Philadelphia's two-percent preference for handicapped businesses was rationally related to its goal of encouraging such businesses to seek City contracts. The City offered only anecdotal evidence of discrimination and the Court ruled that this was sufficient to infer discrimination against the handicapped. Hence, the City was entitled to conclude that the Ordinance would encourage handicapped persons to form businesses and to win City contracts.

Despite the lower courts' articulation of standards of review, uncertainty regarding the appropriate type of evidence to satisfy those standards continues to exist for WBE, LBE and DBE programs. Thus, since the Supreme Court has not yet ruled on WBE, LBE or DBE programs, it is prudent to subject those programs to the *Croson* strict scrutiny standard as well.

³³ *Associated General Contractors of California v. City & County of San Francisco*, 813 F.2d 922 (9th Cir. 1987).

³⁴ *Id.* at 943

³⁵ *Contractors Ass'n of Eastern Pa., Inc. v. City of Philadelphia*, 6 F.3d 990 (3rd Cir. 1993)

area to establish the necessary factual predicate required by *Croson*.³⁹ Once the factual predicate is established, an entity (assuming it is either an active or passive participant in the marketplace discrimination) is entitled to enact a race- and/or gender-conscious program to dismantle the system of exclusion. Methods of proving discrimination include significant statistical disparities, or statistical disparities in conjunction with other evidence (including discriminatory patterns or practices and/or complaints of discrimination).

An inference of discriminatory exclusion may be drawn where a significant statistical disparity is shown between the number of qualified minority contractors willing and able to perform a particular service, and the number of such contractors actually engaged by an entity or by the entity's prime contractors.⁴⁰ In other words, when the relevant statistical pool is used, a showing of gross statistical disparities alone may constitute *prima facie* proof of a pattern or practice of discrimination.⁴¹

“[E]vidence of a pattern of individual discriminatory acts can, if supported by appropriate statistical proof, lend support to a local government’s determination that broader remedial relief is justified.”⁴² *Croson* states that a local entity is not “powerless to deal with individual instances of racially motivated refusals to employ minority contractors.”⁴³ For instance, if an entity has anecdotal evidence before it that non-minority contractors are systematically excluding minority businesses from subcontracting opportunities, it can take action to end the discriminatory exclusion.⁴⁴ Once an inference of discriminatory exclusion arises, the entity may act to dismantle the closed business system by enacting an MBE program.

The Eleventh Circuit in *Cone Corporation v. Hillsborough* has held that a statistical disparity between the percentage of minority contractors in the county and the percentage of county construction dollars awarded to minorities, combined with evidence of MBEs’ complaints of discrimination, constitute a *prima facie* case of discrimination.⁴⁵

Croson requires that an MBE (and, implicitly, a WBE) must have the capacity to perform to be included in the statistical pool. Capacity can generally be shown by comparing the dollars received by willing MBEs to the amount received by non-minority firms. However, if there is a significant size differential, the appropriateness of the comparison may be brought into question. To compensate for that possible differential, this study analyzes not only dollars

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.* at 501 (citing *Hazelwood School District v. United States*, 433 U.S. 299, 307-8 (1977)).

⁴² *Id.* at 509.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Cone Corporation v. Hillsborough County*, 908 F.2d 908, 916

received but the number of contracts. It also reviews the distribution of the value of the contracts awarded for each industry considered.

The Ninth Circuit, in *Coral Construction*, further detailed the type of evidence needed to establish the factual predicate required for a legally defensible MBE program. The Court held that **both** statistical and anecdotal evidence should be relied upon in establishing systemic discriminatory exclusion in the relevant marketplace, as the factual predicate for an M/WBE program.⁴⁶ The Court explained that statistical evidence, standing alone, often does not account for the complex factors and motivations guiding employment decisions, many of which may be entirely race-neutral.⁴⁷

On the other hand, anecdotal evidence by itself, does not suffice to establish a systemic pattern of discrimination.⁴⁸ It is, however, crucial, as individuals' testimony about their personal experiences will bring "the cold numbers convincingly to life."⁴⁹ Thus, a combination of statistics and anecdotal evidence is the most effective way to establish the factual predicate necessary for a legally defensible MBE program.⁵⁰

1. Statistical Evidence

It is important to understand the role of statistics in making the findings regarding whether minority- and woman-owned businesses in the relevant market area have experienced discrimination. The findings that statistics reveal bear on how far the remedy can reach. Significantly, in *Croson* Justice O'Connor cited *Int'l Brotherhood of Teamsters v. United States*.⁵¹ *Teamsters* identifies the use of statistics in two circumstances in which localities can establish relief that is "broader than making individual victims whole:" an intentionally discriminatory system involving prime contractors, or a pattern of individual acts. When either has been the case, broad relief can be provided because, in the language of *Teamsters*, "racial discrimination was . . . standard operating procedure — the regular rather than the unusual practice."⁵²

In determining whether the statistical evidence is adequate to give rise to an inference of discrimination, courts have looked to the "disparity index"—which consists of the percentage of minority (or women) contractor participation in local contracts divided by the percentage of minority (or women) contractor availability or composition in the population of firms in

⁴⁶ *Coral Construction*, 941 F.2d at 919.

⁴⁷ *Id.* at 919

⁴⁸ *Id.*

⁴⁹ *Id.* (quoting *International Brotherhood of Teamsters v. United States*, 431 U.S. 324, 339 (1977)).

⁵⁰ *Id.*

⁵¹ 97 S Ct. 1843, 1855-56

⁵² *Id.*

the local market area. Disparity indexes have been found highly probative evidence of discrimination where they ensure that the “relevant statistical pool” of minority (or women) contractors is being considered.

The Third Circuit, in *Contractors Ass'n of Eastern Pa., Inc. v. City of Philadelphia*, ruled that the “relevant statistical pool” includes those businesses that not only exist in the marketplace but are qualified and interested in performing work for the entity in question. In that case, the Third Circuit rejected a statistical disparity finding where the pool of minority businesses used in comparing utilization to availability were those that were merely licensed to operate in the City of Philadelphia. Because merely being licensed to do business with the City does not indicate either the willingness or the capability to do work for the City, the Third Circuit concluded the statistical disparity did not satisfy *Croson*.

Statistical evidence demonstrating a disparity between the utilization and availability of M/WBEs can be shown in more than one way. First, the *number* of M/WBEs utilized by an entity can be compared to the number of available M/WBEs. This is a strict *Croson* “disparity” formula. A significant statistical disparity between the number of MBEs that an entity utilizes in a given product/service category and the number of available MBEs in the relevant market area specializing in the specified product/service category would give rise to an inference of discriminatory exclusion.

Second, M/WBE *dollar participation* can be compared to M/WBE availability. This could show a disparity between the award of contracts by an entity in the relevant locality/market area to available majority contractors and the award of contracts to M/WBEs. Thus, in *AGCC*, an independent consultant’s study compared the number of available MBE prime contractors in the construction industry in San Francisco with the amount of contract dollars awarded to San Francisco MBEs over a one-year period. The study found that available MBEs received far fewer construction contracts in proportion to their numbers than their available non-minority counterparts.⁵³

The use of statistics was reviewed in a recent Eleventh Circuit opinion in which the Court stated that:

An inference of discrimination may be made with empirical evidence that demonstrates “a significant statistical disparity between the number of qualified minority contractors . . . and the number of such contractors actually engaged by the locality or the locality’s prime contractors.” [citing *Croson* plurality]. We do not read *Croson* to require, nor do we embrace, an attempt to craft a precise mathematical formula to assess the quantum of evidence that rises to

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Specifically, the study found that MBE availability was 49.5 percent for prime construction, but MBE dollar participation was only 11.1 percent; that MBE availability was 36 percent prime equipment and supplies, but MBE dollar participation was 17 percent; and that MBE availability for prime general services was 49 percent, but dollar participation was 6.2 percent.

the *Croson* “[s]trong basis in evidence” bench mark. That must be evaluated on a case-by-case basis.⁵⁴

The Court also determined that a program will not have a sufficient factual basis if there is a neutral explanation for the disparity; if there were methodological flaws; if the statistics were not significant; or if there is contrasting data.⁵⁵

2. Time Frame of Data

In assessing the existence of identified discrimination, through demonstration of a disparity between M/WBE utilization and availability, it is important to examine disparity data both prior to and after the entity’s current M/WBE program was enacted. This will be referred to as “pre-program” versus “post-program” data.

It is not necessary to examine a long history of an entity’s utilization to assess current evidence of discrimination. Indeed, *Croson* indicates that it may be legally fatal to justify an M/WBE program based upon evidence that is outdated.⁵⁶ Therefore, the most recent two or three years of an entity’s utilization data would suffice to determine whether a statistical disparity exists between current M/WBE utilization and availability.⁵⁷

On the one hand, *Croson* requires that an MBE program be narrowly tailored to remedy current evidence of discrimination.⁵⁸ Thus, goals must be set according to the evidence of disparity found. For example, if there is a current disparity between the percentage of an entity’s utilization of Hispanic construction contractors and the availability of Hispanic construction contractors in that entity’s marketplace, then that entity can set a goal to lessen that disparity.

In a Sixth Circuit pre-*Croson* case applying the constitutional standard of strict scrutiny, the figures comparing the percentage of minority businesses within the state were compared with the percent of purchasing contracts awarded. The number of minority businesses covered a two-year period and the comparison of dollars spent covered a 16-year period. The evidence in that case was considered adequate to support relief.⁵⁹

⁵⁴ *Concrete Works of Colorado, Inc. v. Denver* (10th Cir. 1994) 36 F.3d 1513.

⁵⁵ On January 11, 1995, the District Court granted a permanent injunction after a trial on the merits in *Contractors Ass’n of Eastern Pennsylvania, Inc., et al. v. City of Philadelphia*, a challenge to the Philadelphia program that has been going on since 1990. [initial citation: 735 F.Supp. 1274 (E.D. Pa.)]. The Court found that the City program met none of these tests.

⁵⁶ *Id.* at 499 (stating that “it is sheer speculation how many minority firms there would be in Richmond absent past societal discrimination”).

⁵⁷ See AGCC, 950 F.2d at 1401 (consultant study looked at City’s MBE utilization over a one year period).

⁵⁸ *Croson* 488 U.S. at 507

⁵⁹ *Ohio Contractor Ass’n v. Keip*, 713 F.2d 167 (6th Cir. 1983) (cited with approval in *Croson*).

3. Anecdotal Evidence

The statistical evidence is the essential first step in a disparity analysis, in that it identifies and quantifies disparity, and may suggest discrimination. Anecdotal, and other non-statistical evidence provides the next set of determining whether or not there are other explanations for the disparity. If the anecdotal evidence supports the discrimination hypothesis, we have a basis for concluding that discrimination is, in fact, the source of the disparity.

In a noteworthy passage from *Teamsters* cited by the Supreme Court in *Croson*, it was acknowledged that there are often conflicting conclusions for which statistical “proofs” are offered as evidence and states that in such a case the statistics are bolstered by individual testimony of discrimination. Thus, oral histories can be viewed as an appropriate method to bring the numbers to life in a legally recognized manner.

The following types of anecdotal evidence have been presented, and relied upon by the Ninth Circuit, in both *Coral Construction* and *AGCC*, to justify the existence of an M/WBE program:

- M/WBEs inability to obtain contracts for private sector work - *Coral Construction*⁶⁰
- Existence of a good old boy network - *AGCC*
- M/WBEs denied contracts despite being the low bidder - *AGCC*
- M/WBEs were told they were not qualified, although they were later found to be qualified when evaluated by outside parties - *AGCC*
- M/WBEs being refused work even after they were awarded the contract as low bidder - *AGCC*
- M/WBEs being harassed by an entity to discourage them from bidding on entity’s contracts - *AGCC*

Recently, the 10th Circuit elaborated on the type of anecdotal evidence which it would deem most persuasive:

While a factfinder should accord less weight to personal accounts of discrimination that reflect isolated incidents, anecdotal evidence of a

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For instance, the Ninth Circuit upheld a finding of discriminatory exclusion of women in the private sector where the evidence demonstrated that, in addition to a general discriminatory attitude towards women businesses by the private sector in the relevant locality, only a small percentage of a WBE’s business came from private contracts and most of its business comes from race or gender-based programs. *Coral Construction* at 933 (WBE’s affidavit indicated that less than 7 percent of the firm’s business came from private contracts and that most of its business resulted from gender-based set-asides).

municipality's institutional practices carry more weight due to the systematic impact that such institutional practices have on market conditions.⁶¹

This observation suggests that the further afield from the municipality's practices, the less persuasive the anecdote.

4. Unacceptable Evidence

Despite its pathbreaking significance and the general unanimity it has found in the lower courts, *Croson* has its share of caveats. The Court generally observed that construction industry employment discrimination does not justify implementation of strict racial quotas and did not accept the attenuated links that Richmond attempted to make. Specifically, the Court rejected or cautioned against the following forms of evidence as basis for MBE programs:

- Broad assertions of racial disparity based on speculation or statistically irrelevant observations (e.g., the relationship between the low number of minorities in Richmond-area contracting firms and the number of minorities in the general population).⁶²
- Conclusions based on data or experience not related to jurisdiction, industry or conduct which the program seeks to remedy.⁶³

V. RACE-NEUTRAL METHODS TO ADDRESS CONTRACTING BARRIERS

Once discrimination has been shown with the particularity required by the Supreme Court, attention may be focused on what means may be used to remedy that discrimination. Constitutional and statutory standards limit the means available and, accordingly, guide our analysis.

In *Croson*, the Court clarified the approach that should be taken in developing remedial programs. A remedial program must address the source of the disadvantage faced by minority- or woman-owned businesses. If it is found that race discrimination places MBEs

⁶¹ *Concrete Works of Colorado v. Denver*, 36 F.3d 1513, 1530 (10th Cir. 1994).

⁶² *Croson*, 488 U.S. at 499.

⁶³ *Id.* at 503-505

at a competitive disadvantage, an MBE program may seek to counteract the situation by providing MBEs with a counterbalancing advantage.⁶⁴ However, an MBE program cannot stand if the sole barrier to minority or woman business participation is that faced by all new businesses, regardless of ownership.⁶⁵

Evaluating neutral remedies is a necessary step in developing a remedy for discrimination. The Court in *Croson* urged neutral remedies as a more acceptable alternative to race-based plans because “inclusion of such measures in an MBE plan would lend to the plan’s flexibility.”⁶⁶ If the evidence demonstrates that the sole barrier to MBE participation is that MBEs disproportionately lack capital, or cannot meet bonding requirements, then only a race-neutral program of financing for all small firms would be justified.⁶⁷ In other words, if the barriers to minority participation are race-neutral, then the program must be race-neutral or contain race-neutral aspects.⁶⁸ On the other hand, if the evidence shows that in addition to capital and bonding requirements, which are race-neutral, MBEs also face race discrimination in the awarding of contracts, then a race-conscious program will stand, so long as it also includes race-neutral measures to address the capital and bonding barriers.⁶⁹

Inclusion of race-neutral measures is one factor suggesting that an MBE program is narrowly tailored.⁷⁰ However, the Ninth Circuit in *Coral Construction* has recently ruled there is no requirement that an entity exhaust every possible race-neutral alternative.⁷¹ Instead, an entity must make a serious, good faith consideration of race-neutral measures in enacting an MBE program. Thus, in assessing low MBE utilization, it is incumbent to examine barriers to MBE participation that go beyond “small business problems.”

VI. *GEOGRAPHIC SCOPE*

While *Croson* did not speak directly to the geographic boundaries or limitations of M/WBE programs, the Ninth Circuit in *Coral Construction* has ruled that an MBE program must also

⁶⁴ AGCC, 950 F.2d at 1401.

⁶⁵ *Id.* at 923; *Croson*, 488 U.S. at 508

⁶⁶ *Cone Corp.*, 908 F.2d at 916, n.11.

⁶⁷ *Croson*, 488 U.S. at 507

⁶⁸ *Coral Construction*, 941 F.2d at 923.

⁶⁹ *Id.* (upholding MBE program where it operated in conjunction with race-neutral measures aimed at assisting all small businesses)

⁷⁰ *Id.*

⁷¹ *Id.*

be limited to the geographical boundaries of the enacting jurisdiction.⁷² In a recent Tenth Circuit case, the Court found that the City of Denver was not limited to its geographic boundaries in determining the relevant market area.⁷³ The six-county Denver Standard Metropolitan Statistical Area was an appropriate market area, since 80 percent of its construction contracts were let there. In defining eligibility, an entity crafting an M/WBE program must be careful not to sweep into its scope M/WBEs who have never had contact with the entity's business community.⁷⁴

Eligibility is a question of business participation, not of location.⁷⁵ If systemic discrimination is shown in the geographic area where the entity enacting the M/WBE program does business, a presumption exists that a M/WBE who entered the business market in that area has been victimized by the discrimination.⁷⁶ However, before the presumption attaches to an M/WBE, it must be established that the M/WBE is, or has attempted to become, an active participant in the local business community.⁷⁷

In *Coral Construction*, for example, the Ninth Circuit held that the definition of "minority business" used in King County's MBE program was over-inclusive.⁷⁸ King County's definition stated that a minority-owned business had been discriminated against "in the particular geographical areas in which [it] operates."⁷⁹ The Court held that the definition was over-broad because it included businesses other than those which were discriminated against in King County. It would allow, for instance, MBE participation by MBEs who had no prior business contact with King County. Merely being located in the geographic area is not enough. An MBE must show that it previously sought business, or is currently doing business, in that area.

Thus it is imperative to define eligibility for a potential M/WBE program by including **only** M/WBEs that have participated in the market area from which the entity procures its products and services. This requires determining, from an entity's contracting records, the geographic location of the businesses with which it contracts.

⁷² *Id.* at 925.

⁷³ *Concrete Works of Colorado, Inc. v. Denver*, 36 F.3d 1513 (10th Cir. 1994).

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

VII. CONCLUSION

While there is little consensus among legal scholars on the implications of *Croson*, the federal Circuit Courts of Appeals and district courts have forged a surprising degree of unanimity on *Croson*'s mandates. In terms of strict scrutiny, the first requirement is that a "compelling interest" in eradicating the effects of prior discrimination⁸⁰ must be demonstrated by the City. The second requirement is that the MBE program must be "narrowly tailored"⁸¹ to address the specific MBE group suffering the effects of any identified past discrimination by the City or others in the City's market area. In *Adarand v. Pena* the United States Supreme Court held that the same standard of review, strict scrutiny, applies to federal programs in addition to the state and local programs addressed by *Croson*.

While *Croson* does not articulate the appropriate standards by which to judge the constitutionality of Women-owned Business Enterprise, Local Business Enterprise, and Disabled Business Enterprise Programs, lower courts articulate the standards for each classification. First, a WBE program would survive constitutional scrutiny by showing that women face particular disadvantages in an industry as a result of their gender,⁸² which is a less exacting scrutiny than MBE programs. Second, a City may rationally allocate its own funds to ameliorate disadvantages suffered by local businesses, particularly when the City itself creates some of the disadvantage.⁸³ Third, programs giving preferences to disabled businesses will survive constitutional scrutiny if they are rationally related to a legitimate government purpose."⁸⁴

In conclusion, the United States Supreme Court's decision in *Croson* changed the landscape of business affirmative action programs, and altered the ability of public entities to institute remedial programs in the area of public contracting. Most of the earlier *Croson*-related cases were disposed of on procedural grounds and courts did not undertake a detailed analysis of the substantive issues concerning the adequacy of the factual basis and methodology used to justify remedial programs. Lower courts have now largely resolved these procedural issues. Therefore, further direction regarding the methodology and nature of the factual basis needed to design an M/WBE program should be forthcoming.

⁸⁰ 488 U.S. at 505

⁸¹ *Id.* At 507

⁸² *Coral Construction*, 941 F.2d at 931-932.

⁸³ *Associated General Contractors of California v. City and County of San Francisco*, 813 F.2d 922 (9th Cir. 1987)

⁸⁴ *Contractors Ass'n of Eastern PA., Inc. v. City of Philadelphia*, 6F.3d 990 (3rd Cir.1993)

2

PROGRAMS ADOPTED BY THE CITY AND REDEVELOPMENT AGENCY

I. CITY OF OAKLAND HISTORICAL SUMMARY

Oakland is a major city in the San Francisco Bay Area. The City offers 19 miles of coastline to the west and magnificent rolling hills to the east that afford some of the most beautiful views of the San Francisco Bay, the Golden Gate and Bay Bridges, and the majestic Pacific Ocean.

With the California Gold Rush in 1849, Oakland began to develop into a major center of commerce, industry, and transportation. San Francisco was established first, but as more people migrated to the area, it was not long before settlements were established across the Bay from San Francisco, currently known as the East Bay. Horace W. Carpentier, Edson Adams, and Andrew J. Moon are the City's founding fathers.¹

Oakland's population has steadily increased since its charter on May 4, 1852. According to the U.S. Census of 1860, Oakland had a population of 1,543 people. Later, the town of Brooklyn, today known as Lake Merritt, and other smaller towns joined Oakland. Even in its beginnings, Oakland boasted a diverse ethnic composition including 617 foreign-born residents, African Americans, Asians, and Native Americans.

The 1990 U.S. Census recorded a population of 372,242. The demographic breakdown by ethnicity illustrates that Whites comprise 120,849, Blacks 163,335, American Indians/Eskimos/Aleutians 2,371, Asian/Pacific Islanders 54,931 and Other, 30,756. The City's population is projected to climb to 391,700 by the year 2000.

¹ Bagwell, Beth, *Oakland: The Story of a City*, Oakland Heritage Alliance, Oakland, 1982, p. 25

Located in the precise geographical center of the Bay Area, Oakland has been recognized as an important transportation center for more than 100 years. In 1863, the steam railroad was built along Seventh Street from Broadway out to the ferry landing at the Oakland Point. This served as the first integrated train and ferry service and was considered as the main connection to the West Bay.² Originally the western terminus of the Transcontinental railroad, Oakland is still connected to the world by land, sea and air.

The Port of Oakland, located on one of the most beautiful natural harbors in the world, is one of the busiest container facilities in the United States. Oakland International Airport has connecting lines to 150 cities world-wide, and rail lines lead to all points east, north and south. The freeways and Bay Area Rapid Transit system facilitate local transportation and minimize travel time to surrounding cities.

Oakland operates with a City Manager/City Council form of government. The City is the seat of Alameda County, which is one of California's largest counties with a population that exceeds 1.1 million.

The City of Oakland's 1995-1996 Proposed Policy Budget is \$523.4 million. Of this figure, approximately \$110.61 million has been allocated for Community Development, with \$11.85 million for Planning and Building, \$55.48 million for Public Works, \$35.80 million for Housing and Neighborhood Development and \$7.48 million for Economic Development and Employment.

The major industries considered in this study are construction, purchasing, and architectural and engineering professional services. As part of the study, Mason Tillman reviewed the City of Oakland and Redevelopment Agency policies,³ procedures and affirmative action efforts. The analyses involved the following three major steps:

- Collection, review and assessment of the City and Redevelopment Agency purchasing policies and procedures and policies and procedures governing Minority, Women, (M/WBE) and Local Business Enterprise (LBE) utilization.

² Bagwell, p. 41.

³ Although the City and the Redevelopment agency are separate legal entities, they are nonetheless closely related in both form and function. Thus, for example, the Oakland City Council has the authority under California statute to designate the governing body of the Agency and the Council has exercised this authority by naming itself as the Agency's governing board. Because the Agency has no employees and no autonomous facilities, as a practical matter the same personnel have simultaneous responsibility for the affairs of both bodies. Also, although the Agency has its own budget a large portion of its expenditures constitute reimbursements to the City for administrative services and materials which the Agency cannot provide for itself.

Notwithstanding the formal separateness of the City and Agency, both the M/WBE and the SLBE programs under examination in this Study expressively define the City as including the Redevelopment Agency. For this reason, for the sake of analytical convenience, and because the two entities often act unanimously in considering and disposing of legislation, this discussion of M/WBE programs, for the most part treat the City and Agency as a single entity.

- Conduct interviews with City Public Works and Redevelopment Agency officials and purchasing staff in order to understand how the policies and procedures work in relation to the M/WBE and LBE programs.
- Summarization of the City and Redevelopment Agency policies, procedures and programs.

II. OFFICE OF PUBLIC WORKS CONSTRUCTION PROGRAM

A. Office of Public Works

The Office of Public Works is responsible for the infrastructure throughout the City of Oakland. Four departments within the Office of Public Works manage capital improvement projects, and provide street cleaning, sewer and storm drain maintenance, and parking enforcement. The four departments are Support Services, Maintenance Services, Engineering and Design Services, and the Office of Planning and Building.

B. Construction Program

The Oakland City Council passed Resolution 57926 C.M.S. on March 6, 1979. By this action, they approved and adopted the Minority Business Enterprise Program and the Affirmative Action Employment Program as part of the Affirmative Action Provisions for Public Works Contracts. Resolution 60691 rescinded that resolution and passed a revised Minority and Women Business Enterprise Program, effective July 1, 1982.

The objectives of the 1982 program are to establish goals for the participation of minority business enterprises and women business enterprises in the City of Oakland and Redevelopment Agency construction contracts and to establish a program for the achievement of these goals.

Program definitions are:

Minority group memberships include:

- (a) *Black* - all persons having origins in any of the Black racial groups of Africa.
- (b) *Hispanic* - all persons of Mexican, Puerto Rican, Cuban, Central or South American descent and Spanish culture. The Portuguese are excluded from the Hispanic category and are to be classified according to their race.

- (c) *Asian or Pacific Islander* - all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent or the Pacific Islands.
- (d) *American Indian or Alaskan Native* - all persons having origins in any of the original peoples of North America, and who maintain cultural identifications through tribal affiliation or community recognition.

Minority Business Enterprises are defined as:

A United States business wherein the minority group members or stockholders have at least 50 percent ownership interest in the business and possess control over management, capital and earnings. If the business is publicly owned, the minority group members or stockholders must have at least 51 percent ownership interest in the business and possess control over management, capital and earnings.

Women Business Enterprises are defined as:

A United States business wherein women members or stockholders have at least 50 percent ownership interest in the business and possess control over management, capital and earnings. If the business is publicly owned, the women members or stockholders must have at least 51 percent ownership interest in the business and possess control over management, capital and earnings.

Small Business Enterprises are defined as:

A business which meets the definition of a minority business enterprise or women business enterprise, and in addition, meets the small business size standards of the Small Business Administration.

Contractors are defined as:

The individual partnership, corporation, joint venture or other legal entity entering into a contract with the City of Oakland or Redevelopment Agency.

Subcontractors are defined as:

The individual partnership, corporation, corporation or other legal entity entering into a contract with the contractor to perform a portion of the work.

C. Elements of the Program

The City and Redevelopment Agency's Minority and Women Business Enterprise Construction Program sets goals of 30 percent for the participation of minority business enterprises in the construction contracts. Fifty percent of the minority business enterprises should qualify as small business enterprises.

A goal of five percent of the contract amount is set for the participation of women business enterprises, with 50 percent of the women business enterprises qualifying as small business enterprises.⁴

The program requires that contractors bidding on construction contracts make every effort to obtain M/WBE participation. The intention of the City is to award contracts to the lowest responsible bidder who has achieved, or made a good faith effort to achieve, the program's goals. The steps that must be followed by prime contractors (primes) in seeking to satisfy the program's goals are set forth below:

- A contractor may satisfy the goals by awarding appropriate portions of the contract to M/WBE firms, by using minority or women brokers, or by buying supplies or prefabricated materials from minority- or women-owned businesses. However, the M/WBE must perform actual services or provide actual supplies in order for its involvement to contribute toward the goals; merely acting as a passive conduit will not suffice. Also, in order to encourage the use of M/WBEs in all circumstances, the program states that priority consideration will be given to M/WBEs for the performance of emergency work, and it calls for an annual listing of M/WBEs which are available to perform this type of work.

Prime contractors must maintain the M/WBE participation percentages indicated from the time of contract award throughout the term of the contract, notwithstanding increases by amendment. Failure to maintain the award percentages may result in penalization in the amount that should have been awarded to maintain the M/WBE participation level stated in the bid. Also, primes may not substitute listed M/WBEs on bids or contracts without the City's or Redevelopment Agency's approval.

- Minority and women businesses must be certified by the City or by an agency approved by the City, before bids are submitted, in order for their involvement to count towards program goals. The City relies on federal regulations, namely, 49 CFR Part 23, in making certification decisions.

⁴ Previously, minority women were only counted towards fulfillment of the goals for the participation of women business enterprises, currently those businesses may be counted towards fulfillment of either the goal for the participation of women business enterprises or minority business enterprises, but not both.

- The City's certification program delineates a number of criteria to ensure that new businesses recently purchased and ostensibly owned by minorities and women are not shams set up to take advantage of the program. Among these criteria are stipulations that prior owners have no equity interest in the new business other than that of a creditor; prior owners have no rights to share in the profits or exercise control over the business; and prior owners cannot share equipment or employees with the new owners. Independent status of participating entities is required for joint ventures. The goal of these requirements is to ensure that the participating M/WBEs have a real stake in the outcome of the venture.

Prime contractor payments for various forms of M/WBE participation are to be counted toward program goals in the following manner:

- Payments to M/WBE contractors or subcontractors for work actually performed by the M/WBE's work forces will be counted, provided that the work in question is "commercially useful", (i.e., that it constitutes a distinct element of the project and is substantially performed by the M/WBE rather than through a significantly greater than industry-standard usage of subcontractors by the M/WBE).
- The portion of payments to a joint venture which includes an M/WBE as a partner and which compensates the M/WBE for their proportional participation on the venture will be counted towards the goal.
- Sixty percent of prime contractor payments to M/WBE manufacturers, fabricators, suppliers, or regular dealers will be counted towards the goals, provided that the M/WBE firms meet the applicable definitions for these types of businesses set forth in the program.
- Ten percent of the amount paid as commissions to M/WBEs who act as brokers.
- One hundred percent of the amount paid to M/WBE trucking brokers will be counted provided that the broker verifies through various forms and documents that only certified M/WBEs are actually performing the trucking tasks; otherwise, the brokers will receive credit towards the goal for only the commission fees earned by and the actual dollar amount of work performed by M/WBE truckers.
- Payments to MBE or WBE owner-operators of equipment will be credited 100 percent toward the achievement of either the MBE or the WBE goal, but not both. Rental of equipment from an M/WBE will not be counted as M/WBE owner-operated involvement for these purposes; the M/WBE must either own, or be in the process of purchasing, the equipment.

Finally, payments to M/WBEs for services which do not fit into any of these categories are credited 100 percent toward the program's goals whenever the City's review of the transaction indicates that fees charged are reasonable and customary for similar services.

1. Bid Process

As stated above, the City's M/WBE program places on prime contractors the requirement to create subcontracting opportunities for M/WBEs to participate in City construction projects. Three distinct components of the program operationalize this responsibility; these are the program's provisions regarding bid notification, bid submittal, and bid review.

2. Bid Notification

The program requires prime contractors to take several aggressive steps to ensure that M/WBEs are aware of contracting opportunities on City construction projects. First, at least two weeks prior to the bid due date, primes must notify minority and women contractor associations and minority and women business development centers of their intention to solicit M/WBE participation. These letters should be sent certified with return receipt requested to at least four organizations, and they should contain detailed information about the project's scope of work, the work being sought, deadlines, and contact information. Second, at least two weeks prior to the bid opening, primes should send certified return receipt requested letters direct to M/WBEs, setting forth the same type of information described above.

The program stipulates that at a minimum these letters should be sent to three minority businesses and one woman-owned business for each trade or category of work. Within the same timeframe, primes must also notify M/WBE suppliers and prefabricators of their supply and material needs.

Third, at least two weeks before bid opening, the prime must advertise their contracting opportunities in at least three publications (a local newspaper, a minority or woman oriented business publication, and a major business publication).

3. Bid Submission

The program requires primes to submit along with their bids certain information regarding their history of compliance with fair employment laws, and their efforts to secure M/WBE participation on the specific project being bid. A list of all M/WBEs that the prime will utilize on the project, with breakdowns of the M/WBEs by dollar amount, also must be submitted with each bid.

Furthermore, the prime contractors must submit with their bids an Affidavit of Non-Disciplinary or Investigatory Action declaring that the prime has been the subject of no adverse action taken by the federal Equal Employment Opportunity Commission or its

California equivalent, or by the U.S. Department of Labor's Office of Contract Compliance. Alternatively, the prime must explain such actions, except where legal action is pending.

4. Bid Review: Analysis of Good Faith Efforts

To ensure the selection of the most diligent prime, the City will require the three lowest bidders to attend a pre-award meeting so that closer examination may be made of their compliance with program goals.

The City and Redevelopment Agency's M/WBE program also facilitates the realization of its goals by requiring primes to make their records and documents available for City inspection, or face stiff monetary fines and possible debarment from City contracting, for failing to do so. Finally, the program stipulates that prime contractors cannot receive progress payments from the City unless they have provided documentation that they have made proper payments to their M/WBE subcontractors.

When a prime has not met the program's goals for M/WBE participation, the program authorizes the City to determine whether the bidding prime had made a good-faith effort to meet the goals. The program outlines the procedure for the review of bids rejected for non-attainment of goals notwithstanding their proposed low price. The apparent low bidder, if rejected, has the right to protest such determination before the City Council.

D. Small Local Business Enterprise Construction Services Program

In October, 1992, the Oakland City Council determined that small local businesses "suffer particular disadvantages" created by the City itself through "higher local taxes, higher prevailing wages, and more stringent zoning and other permit requirements," and that local catastrophes such as the Oakland Hills Fire and the Loma Prieta earthquake have exacerbated these disadvantages by deterring the location of businesses in Oakland.

In February, 1993, the City and the Redevelopment Agency by separate resolution each adopted the same Small Local Business Enterprise (SLBE) Program in public construction projects. The resolution's objective was "to ameliorate disadvantages suffered by such businesses and to encourage them to locate and remain in Oakland."⁵

A small local business enterprise was defined as a business which meets the Small Business Administration's size standard, is located in Oakland, is at a fixed, established address, has been in existence at least six months in Oakland with a valid tax certificate, and has proof of past contracts citing its Oakland business address.

⁵

By the same resolutions, the City and Redevelopment Agency also adopted a local employment program designed to remedy the economic and social ills identified by the City Council as resulting from high local unemployment. Discussion of this program is beyond the scope of this study.

In substance and procedure, the SLBE program mirrors the City and Redevelopment Agency's M/WBE construction program in nearly every important respect.

For example, the SLBE program (as does the M/WBE program) requires that prime contractors attain the 20 percent SLBE participation goal through their efforts to locate and apprise eligible SLBEs of contracting opportunities. Prime contractors are encouraged to under the same "good-faith effort" approach to identifying and communicating with SLBEs as they should with M/WBEs. That is, primes should advertise; write letters to at least four (4) SLBEs; and notify four (4) trade associations at least two weeks before bids are due. Primes must also include with their bids a list of the SLBEs they will use. Primes are barred from substituting listed businesses without the City's or Redevelopment Agency's approval.

Unlike M/WBE prime contractors, SLBE primes are not required to stipulate their compliance with fair employment laws when submitting bids.

The actions of non-complying primes are to be reviewed under the "good-faith effort" standards in the same manner as prime contractors who do not meet M/WBE goals. Also, primes which do not cooperate with investigations into their treatment of LBEs will be penalized to the same extent as primes who fail to meet M/WBE goals.

E. Bonding, Financing, and Technical Assistance Program

On October 17, 1989, the City experienced the devastating Loma Prieta Earthquake which caused extensive damage to Oakland's City Hall. Because the local construction industry, in particular the businesses located in Oakland that were small, minority-, or women-owned had suffered from the effects of a nationwide recession, on May 4, 1993, a resolution was prepared by the Office of Public Works authorizing the City Manager to enter into a agreement to provide bonding, financing, and technical assistance to small, minority-owned or women-owned businesses located in Oakland for the City Hall Renovation Project.

The City subsequently entered into agreements with two firms to provide project bonding, financing, and technical assistance. The firms offer:

- bonds provided by surety companies that meet the City's bonding ordinance with the City taking a five percent risk position
- financing for working capital available to contractors and subcontractors from Bay Area banks
- technical assistance and management services are provided for packing bond and loan documents, management assistance and fund control.

III. CITY PURCHASING

It is the policy of the City of Oakland to develop maximum competition for all purchases, to make awards based on the lowest responsible bid received consistent with the Purchasing Ordinance 7939 C.M.S. and to meet the needs of City Departments by procuring the best quality goods and services for the best price. The Purchasing Division strives to carry out the policy of the City Council to support the economic viability of the City's local, minority- and woman-owned business enterprises through aggressive outreach of these enterprises for its procurement opportunities.

Ordinance No. 7937 C.M.S, originally passed in 1969, and amended several times thereafter, formulated and established procedures for bidding, contracting, and purchasing of supplies and services. Supplies include materials, commodities and equipment. Contracts for supplies exceeding \$15,000 needed City Council approval. In July 1994, Ordinance No. 11724 raised the amount requiring approval to contracts exceeding \$50,000.

The purchasing ordinances provide a five percent preference to local businesses and an additional five percent preference to local minority suppliers in award of all purchase orders.

Where the cost of services, supplies or combination thereof required by the city exceeds \$50,000, the City Clerk shall call for formal bids by advertising at least ten calendar days prior to the date set for bid opening.

The City requires contractors and vendors of materials or services to agree to indemnify and hold the City harmless for claims and losses arising from or in connection with the contracting party's work for the City.

IV. ANALYSIS OF COMPLAINTS FILED WITH CITY OF OAKLAND

A. Introduction

In July 1993, the Oakland City Manager's Office directed the centralization of all contract compliance functions under one department. The Office of Public Works, Contract Compliance Section ("Compliance") was directed to monitor the activities of all City departments to ensure compliance with M/WBE program requirements. This section will (1) discuss and examine thirteen complaints filed by local contractors and subcontractors with the City of Oakland's Contracts Compliance Section during the period from 1993 through 1995 and (2) analyze Compliance's complaint resolution procedure. These complaints constitute the agency's entire complaint file for the two-year period. The origin, substance, and resolution of each complaint is provided.

B. Purpose

The purpose of this section is to evaluate Compliance's administration of the M/WBE program based strictly on an analysis of the complaints; the complaint resolution procedure; Compliance's resolution of the complaints; Compliance employees' comments about the complaints; and the complainants' responses and comments regarding the manner in which Compliance handled the complaints.

The complaint files provide the analytical framework for the discussion. Anecdotal statements collected from interviews are provided in Part Four (Oral History Analysis) and are considered in this section only to the extent necessary to clarify and understand the nature and resolution of the complaints.

C. Methodology

Oral interviews of ten complainants were conducted. The interviewees were asked about the particulars of the complaint, whether the complaints were resolved to their satisfaction, their experiences with bidding City of Oakland jobs; and, their opinions about the effectiveness of the City's administration of the M/WBE program. Attempts to interview the three remaining complainants were unsuccessful.

The Contract Compliance Supervisor and a Contract Compliance Officer were interviewed about Compliance's complaint resolution procedure and the resolution of the complaints.

D. The City of Oakland's Complaint Resolution Procedure

The City of Oakland's Modifications to the Standard Specifications for Public Works Construction provide for the filing of a pre-bid complaint or a post-bid protest. A bidder complaining about the pre-bid specifications or bidding requirements must file a written complaint with Contract Compliance not later than five working days prior to bid date. A bidder who objects to a bid by any party must file a written protest within five working days after the bid opening date. The Specifications do not detail the procedure for processing a concern that does not fall into one of the above categories. The Specifications also fail to provide for the time and or manner in which Compliance is to respond to the complaint. According to the provisions provided in the Specifications, the majority of the documents reviewed for this analysis are protests; however, they will be referred to as complaints for the purposes of this analysis.

The Contract Compliance Supervisor (Supervisor) and a Contract Compliance Officer (Officer) are responsible for specific City projects. An incoming written complaint is referred to the Supervisor. The Supervisor assigns the complaint to the Officer assigned to

the project. As noted above, the Specifications do not expressly provide that Compliance respond. However, in practice the Officer investigates the facts and issues raised in the complaint and usually provides a written resolution of the issues raised to the complainant.

While the Specifications and Program provisions do not expressly provide for an appeal of a determination made by Compliance, analysis of the complaints reveals that appeal is allowed. The City Council normally hears an appeal; however, in its absence the City's Affirmative Action Manager may conduct an appeal hearing. An appeal hearing may be initiated at the request of the contractor, Compliance, or both. The complaint files indicate that review of Compliance's decision is not guaranteed and that Compliance may exercise its discretion to deny a contractor's request for an appeal. A complaint that raises an issue beyond Compliance's jurisdiction is referred to the City Attorney's office for its review and decision. Referral issues included the late submission of a bid and the failure to provide the required notarization of a form.

E. Analysis of Complaints

Eight of the complaints were filed by companies owned and controlled by Caucasian males.⁶ The five remaining complainants included one Hispanic American contractor, one Asian American subcontractor, and three African American subcontractors.

Table 2.1 depicts the 13 complaints by race and ethnicity, and indicates whether the complainant was interviewed.

**Table 2.1 Complaint Race/ethnicity
1993-1995**

Ethnicity	# of Complaints Filed	Interview Conducted
Caucasian	8	Yes
African American	3	No
Hispanic American	1	Yes
Asian American	1	Yes

Table 2.2 summarizes the nature and resolution of the complaints. Nine of the 13 complaints originated as bid protests, with one of these complainants also protesting the City's cancellation of his contract. One protest was a complaint of late payment by the City. Of the remaining three, one protested Compliance's rescission of its initial determination that the complainant met the M/WBE program requirements; one requested clarification of fines

⁶ One of the majority contractors is a 51 percent woman-owned business. Compliance has denied the company certification as a WBE and the company will be treated as a majority contractor for the purposes of this report.

imposed upon his company; and the final complainant was cited for violations of the City's local employment program laws.

**Table 2.2. Summary of Complaints Filed with City of Oakland
1993 - 1995**

Summary of Complaint	Year Filed	How Originated	Resolution
Complainant protested the submission of competing bids that failed to meet the MBE/WBE/SLBE program goals.	1995	Bid protest	Compliance rejected complainant's bid as non-responsive for failure to meet M/WBE goals. The contract was awarded to one of the two competing bidders that Compliance determined did meet the program goals.
Complainant further protested the City's imposition of a monetary penalty against his company for non-compliance with the City's local employment laws.	1993	Complainant cited for non-compliance.	The penalty issue is in litigation.
Complainant protested the submission of competing bids that contained irregularities and failed to meet SLBE and MBE requirements.	1995	Bid protest	Complainant was awarded the contract. The competing bidder was disqualified.
Complainant protested the rejection of its bid and the submission of a competing bid that failed to meet M/W/SLBE goals. Complainant further complained about the City's lack of cooperation when complainant attempted to obtain its competitor's bid information.	1994	Bid protest	Complainant did not get the award.
Complainant protested rejection of its bid and award of contract to a company that failed to meet M/W/SLBE program goals.	1994	Bid Protest	Complainant was not awarded project.
City rejected complainant's bid on the grounds that it was too high, and failed to meet M/W/SLBE and good faith goals. Complainant protested bid rejection and obtained a hearing.	1994	Bid protest	Bid was reopened and renegotiated with complainant's company on the grounds that the City clarify its good faith publication requirements. Complainant won the award.
Protest of bid rejection and award of contract to a company that failed to meet M/W/SLBE program goals.	1994	Bid protest	No written response from City. Complainant did not pursue the matter.

**Table 2.2. Summary of Complaints Filed with City of Oakland
1993 - 1995**

Summary of Complaint	Year Filed	How Originated	Resolution
Complainant protested award to company whose bid contained irregularities and failed to meet M/W/SLBE requirements.	1994	Bid Protest	City rejected complainant's protest on grounds that it was untimely. However, complainant's competitor withdrew its bid and complainant was awarded the contract.
Protest of award to company that failed to meet M/W/SLBE goals. Complainant orally complained of the City's cancellation of a contract.	1994 1994	Bid protest Protest of contract cancellation	No written response from City. Complainant discovered that a competitor got the job. City staff performed the canceled job.
Complaint that City redefined a supplier that resulted in complainant's bid losing compliance.	1994	Protest of City's retraction of compliance approval	Complainant restructured bid to meet City's compliance requirements.
Complainant protests the imposition of an \$81,000 fine against his company for alleged local employment violations.	1994	Request for information about the imposed fines.	City has negotiated with complainant to reduce the amount of the fine; state will pay portion of money due complainant.
Complainant was cited for violations of the City's local employment program laws.	1994	Unclear	Complainant has hired an attorney and declined interview.
Protest of bid irregularities	1994	Bid Protest	City recommended award of contract to complainant. Attempts to interview complainant unsuccessful.
Complaint of late payment from City, racism, harassment, and conspiracy.	1994	Complaint about late payment	Potential litigation. Attempts to interview complainant unsuccessful.

A review of the complaints, Compliance's resolutions and the complainants' responses follow.

- *Compliance normally, but not always, provides a written response to a complainant within 30 days of the date of the complaint. The response is usually a thorough and detailed reply to the issues raised in the complaint.* Compliance responded to ten of the 13 complaints within 30 days. Three of the complaints show no indication of a written response from Compliance.

For example, one complainant protested the award of a job to a non-local company that allegedly failed to meet M/W/SLBE program goals. The file contains no written record of Compliance's response. The complainant did not pursue the protest.

- *Compliance does not have a standard rule by which one can determine when bid irregularities will result in denial of a contract and when irregularities will be overlooked. The protests are decided on a case-by-case basis and Compliance appears to attempt to exercise its discretion in a manner that furthers the intent of the M/WBE program and the City's local employment laws. Further, Compliance will decide some bid irregularities itself, and will refer others to the City Attorney's Office. Finally, while a non-conforming bid may be accepted by the City Attorney, Compliance still has the power to reject the bid on other grounds.*

One of the complaints involved three separate contractors bidding for a City project. For clarity, the three bidders will be referred to as Contractors A, B and C. Contractors A and B protested the potential award to Contractor C, who allegedly failed to meet SLBE requirements and whose bid contained irregularities (late submission, failure to notarize a form). However, Compliance referred the late submission and non-notarization issue to the City Attorney's office. That office found both irregularities to be minor and declined to deny the award to Contractor C on those grounds. However, Compliance found Contractor C's failure to meet SLBE program goals sufficient to deny the contract.

Contractor A also protested the potential award to Contractor B for alleged non-compliance with SLBE goals. However, Compliance found that Contractor B's bid met the M/W/SLBE program goals and ultimately awarded the contract to Contractor B.

- *Compliance's investigation of a bid protest may result in (1) a reversal of its award decision and (2) a referral of the matter to the City Council and a recommendation to the City Council that complainant be awarded the contract. Compliance will not always include the reasons for its decision in its written response.* An African-American complainant protested the award of a contract to a non-local white contractor who allegedly violated the City's local employment laws. Compliance investigated the matter and informed complainant in writing that the matter would be placed on the City Council's agenda and that Compliance would recommend that the contract be awarded to complainant. Compliance's written response does not indicate the reasons for its reversal.

- *Compliance will assign an inspector to a project site to investigate allegations of non-compliance with M/W/SLBE and Local Employment program requirements and will cite contractors for violations of the requirements.* Compliance cited Contractor A above in 1993 for non-compliance with Section V, Paragraph 3 of the City's Affirmative Action Employment Program and Section III of the Local Employment Program (requirement that 40 percent of the work hours be furnished by Oakland residents on a craft-by-craft basis and that all new hires be Oakland residents). Compliance imposed a \$14,000 fine on the complainant despite the complainant's attempt to comply, and later denied complainant's request for an appeal of the fine. Complainant has sued the City to recover the \$14,000.

Compliance cited an African American contractor for non-compliance with the City's local employment program and labor law violations. Compliance used the City's inspector's progress reports to provide a detailed account of the alleged violations to complainant. The most recent documentation in the file indicates that litigation was pending at the end of 1994.

- *Some of the complaints filed appear to be unfounded challenges to a competitor's bid. In such cases, Compliance will not reconsider its rejection of the complainant's bid.* For example, one contractor filed a written protest with Compliance, citing bid irregularities and a failure to meet the good faith requirement. Compliance noted in its written response that the allegedly-non-complying bidder met program requirements which eliminated the need for a good faith showing. The complainant was not awarded the contract.
- *Compliance will strictly enforce the requirement that a prime contractor's subcontractors be certified for the purpose required for the job in question.* One complainant protested the denial of her company's bid on the grounds that one of her subcontractors wasn't certified. While the company in question was certified for janitorial work, it was not certified for construction work. Complainant was not awarded the contract.
- *Compliance's purpose in its administration of the M/WBE program is to abide by the intent of program requirements. Compliance has and will exercise its discretion to re-open and renegotiate a bid with a contractor who Compliance perceives has made an honest attempt to show good faith.* A majority contractor's bid was rejected for a failure to show good faith. The contractor appealed and ultimately won the contract when Compliance found that its good faith publication requirements were unclear (i.e. the definition of what constitutes a local newspaper and guidelines concerning the acceptable format for bid advertising) and that the contractor had honestly attempted to comply.
- *Compliance strictly enforces the five day limit for bid protests.* Compliance rejected complainant's bid protest of a competitor's bid that did not meet M/W/SLBE program requirements on the grounds that the protest, filed 14 working days after the bid opening date, was untimely. However, Compliance indicated that it would monitor the project

to assure compliance with M/W/SLBE program requirements should the contract be awarded to the competitor. Complainant was awarded the contract when the competitor withdrew its bid.

- *Compliance has the discretion to cancel an awarded contract and perform the job with its own staff if the agency finds that option more cost effective.* Complainant protested the cancellation of his company's contract with the City. The City's contract provides for cancellation at the City's discretion. Compliance also has the discretion to reimburse a disgruntled bidder for its bid preparation time in instances where the City cancels. Compliance is considering the possibility of reimbursing the complainant for its bid preparation time.
- *Compliance has the discretion to withdraw compliance status and can allow a non-complying contractor to restructure a bid to meet compliance.* Complainant relied on Compliance's referral of a supplier to meet M/W/SLBE goals. Compliance later redefined the supplier as a broker, resulting in complainant's loss of compliance status and despite evidence suggesting that the company is a supplier rather than a broker. Compliance resolved the issue by allowing complainant to restructure its bid to meet program requirements.
- *Compliance has the discretion to lower an imposed fine and appears more conciliatory when the alleged violation results from a difference in interpretation of the applicability of a law.* Complainant contracted to perform a job for the State of California that was administered by the City under a City contract. Complainant was cited and fined for alleged local employment law violations. Due to a difference of interpretation about the applicability of local employment laws to a job performed for the state, Compliance negotiated with complainant to reduce the fine by more than 50 percent. As noted above, Compliance adopted a similar conciliatory approach (by re-opening and renegotiating the bid with the protesting contractor) when the interpretation of its good faith publication requirements were at issue.

F. Findings

The complaints reflect contractors' difficulty in complying with M/WBE and local employment program requirements. The most problematic were the percentage goals, payroll, certification of subcontractors and local employment laws. Majority contractors appear to have the most difficulty complying with both M/WBE program requirements and the local laws. Minority contractors are cited more often for non-compliance with local employment laws than with failure to comply with M/WBE program requirements.

Due to the variety and complexity of the issues raised in the complaints, Compliance does not utilize a standard complaint resolution procedure. The office decides each case on its merits with the purpose of furthering the intent of M/WBE and local employment program

goals. This approach may lead an observer to conclude that Compliance is not consistent in the manner in which it handles bid irregularities.

The majority of the complainants are Caucasian contractors whose complaints reflect dissatisfaction with (1) the effectiveness of Compliance's administration of the M/WBE program and (2) Compliance's consistency or lack thereof in the fair administration of the bid process and the awarding of contracts. This group takes advantage of the protest and appeal process. The absence of a significant number of complaints from minority contractors warrants explanation. The complaints available from minority contractors reveal their perception that Compliance unfairly administers the M/WBE program.

Some of the issues raised in the complaints were shared by minority and majority contractors. For example, the timeliness of the City's payments or the perceived political nature and inconsistency of the bid award process were concerns expressed by both groups. This suggests a dissatisfaction with program administration that is shared by both majority and minority contractors.

The resolution of complaints is not handled solely by Compliance. The City Council and the City Attorney may become involved in the resolution and decision process.

Many complainants perceive that Compliance imposes a barrier to their business operation in its administration of the M/WBE and local employment programs, its failure to pay contractors on time, and its lack of cooperation with contractors when handling complaints.

G. Conclusion

Of primary concern to the City is the determination of the reasons for the number of complaints alleging non-compliance with M/WBE and local employment program requirements. One possibility is that the requirements are too burdensome. If this were the case, the City might consider the application of program requirements on a project by project basis or the imposition of a minimum monetary threshold before the requirements apply.

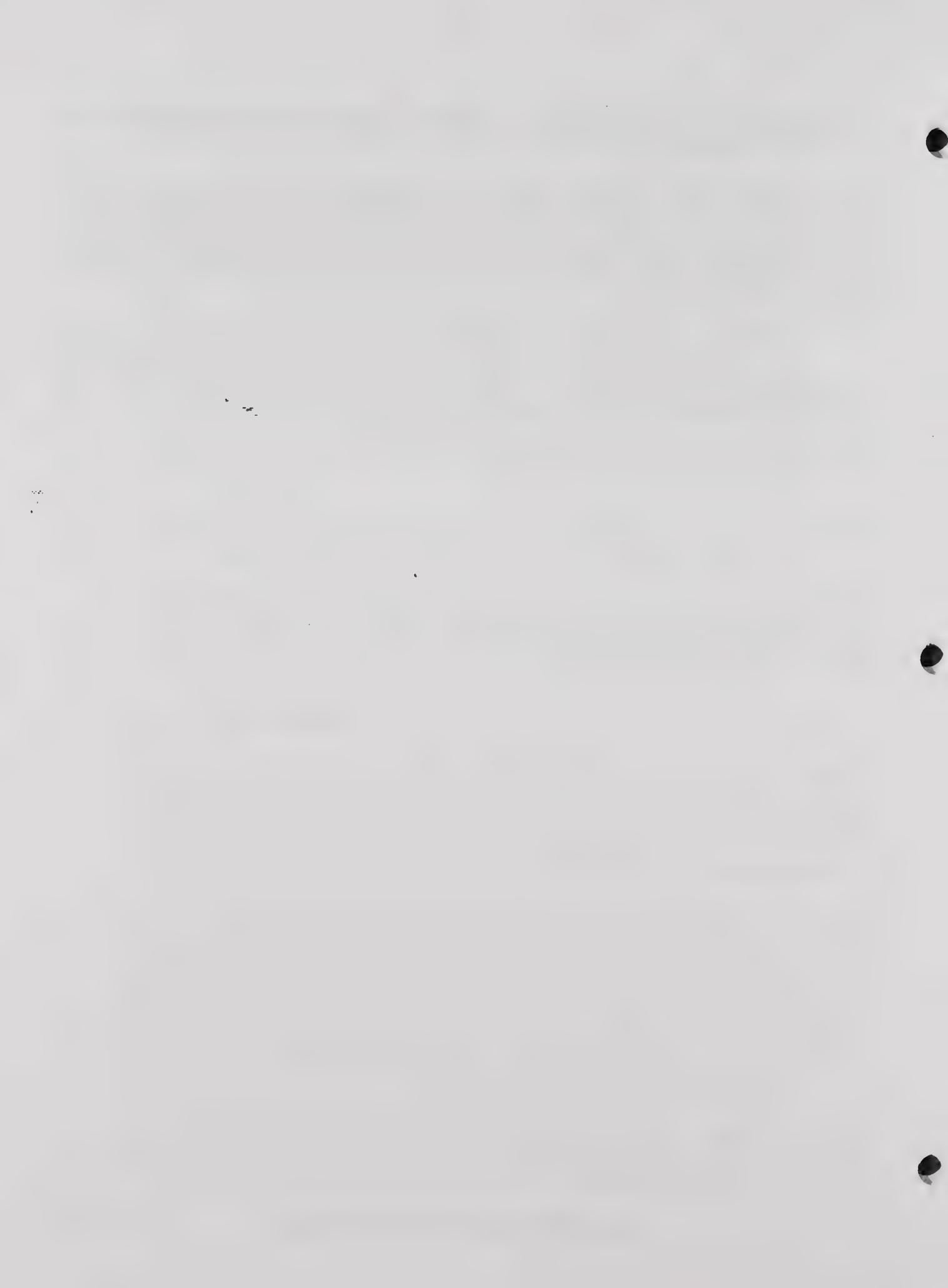
One of the purposes of the M/WBE program is to level the playing field by increasing the participation of women and minorities in the construction industry. The small number of complaints by minority contractors and their lack of participation in the bid protest and appeal procedure should be examined to determine why the participation from this group is limited. An analysis of the complaints reveals that majority contractors are availing themselves of the bid protest and appeal process to obtain City jobs. Nine of the complainants protested the award of a contract to a competitor. Eight of these complainants were majority contractors. The remaining complainant was African American.

Five protests resulted in the complainant being awarded the contract. Majority contractors received four of the awards, which represents a 50 percent success rate. One contract was awarded to a minority contractor. As participation in the complaint process can sometimes

result in the award of a contract, the question arises why more minority contractors are not taking advantage of this process.

Further, a word of caution is necessary to guard against concluding that the small number of complaints from minority contractors is an indication that this group has no complaints and is satisfied with the City's administration of the M/WBE program. Information collected from the complaints filed by minority contractors indicate the existence of problems that need to be addressed.

To the extent that the complaints reveal contractors' frustration and/or disillusionment with the City's administration of the M/WBE programs and the complaint resolution process in general, a cooperative approach to complaint processing on the part of City officials might further the goal to encourage bidding on City projects.



3

STATISTICAL DISPARITY ANALYSIS

I. STATISTICAL FRAMEWORK

The acceptable method for measuring business discrimination, as outlined in *Croson*, is to compare the utilization of M/WBEs in the City of Oakland and the Redevelopment Agency's market area to the availability of M/WBEs in that market area. Where that comparison yields a statistically significant disparity, discrimination can be inferred.¹

Before such a statistical test or comparison can be undertaken, the following must be determined:

- the historical utilization of M/WBEs by ethnicity/gender and contracting/procurement category
- the relevant market area by contracting/procurement category
- the availability of M/WBEs by ethnicity/gender and contracting/procurement category in the relevant market area

¹

Croson, 488 U.S. at 509

II. CITY CONSTRUCTION, ARCHITECTURE AND ENGINEERING, AND PURCHASING CONTRACTING

As set forth in *Croson*, and subsequent cases, the history of M/WBE contracting in the enacting jurisdiction must be well-documented in disparity studies. Utilization data were collected from City and Redevelopment Agency records. The objective of the utilization data collection was to determine the contracting of M/WBEs, compared to non-M/WBEs. The specific contracting categories under consideration were construction, architectural and engineering, and purchasing. The study period was three years, from July 1991 through June 1994.

Fiscal years 1991-94 contracted amounts for the City and Redevelopment Agency were collected from the Public Works Department. City and Redevelopment Agency purchases during that period were collected from the Purchasing Division. The total dollar volume analyzed for this study, as depicted in Table 3.1, is \$164,758,604. This amount included \$97,104,917 in public works construction, \$10,203,878 for architecture and engineering, and \$57,449,809 for purchasing.

Table 3.1 Total City And Redevelopment Agency Dollars in Study

Agency	Dollar Volume
Public Works Department	\$ 97,104,917
Architecture and Engineering	\$ 10,203,878
Purchasing	\$ 57,449,809
Total	\$164,758,604

III. UTILIZATION ANALYSIS

A. Construction Utilization – 1991-94

Table 3.2 depicts the number of construction contracts received by various ethnic and gender groups for the three-year study period:

African Americans: Received 283 or 24.9 percent of the construction contracts during the study period. These 283 represented \$20,493,173 or 21.1 percent of the construction contract dollars.

Asian Americans: Received 115 or 10.1 percent of the construction contracts during the study period, contracts representing \$7,740,052 or 7.9 percent of the construction contract dollars.

Hispanic Americans: Received 166 construction contracts or 14.6 percent of the construction contracts during the study period, representing \$8,175,092 or 8.4 percent of the construction contract dollars.

Native Americans: Received 12 construction contracts or one percent of the construction contracts during the study period, representing \$2,617,224 or 2.7 percent of the construction contract dollars.

Caucasian Females: Received 141 or 12.4 percent of the construction contracts during the study period, representing \$4,198,193 or 4.3 percent of the construction contract dollars.

Caucasian Males: Received 418 construction contracts or 36.8 percent of the construction contracts during the study period, representing \$53,881,183 or 55.4 percent of the construction contract dollars.

Tables 3.3 - 3.5 show construction utilization by gender and ethnicity for each year of the study period:

African Americans. Contracts and construction dollars increased in each successive year of the study period, with their receiving 28.2 percent of the construction contracts and 28.5 percent of the construction dollars in 1993-94.

Asian Americans: Contracts and construction dollars increased in each successive year of the study period, with their receiving 10.3 percent of the construction contracts and 12.2 percent of the construction dollars in 1993-94 (the percentages in 1992-93 were 11.8 percent of contracts and 5.5 percent, respectively).

Hispanic Americans: Contracts and construction dollars decreased in each successive year of the study period, with their receiving 12.2 percent of the construction contracts in 1993-94 (down from 20 percent in 1991-92) and 9.2 percent of the construction dollars in 1993-94 (down from 10.7 percent in 1991-92).

Native Americans: Contracts and construction dollars increased in each successive year of the study period, with their receiving 1.8 percent of the construction contracts and 4.7 percent of the dollars in 1993-94.

Table 3.2
Construction Utilization
Fiscal Years 1991 - 94

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	283	24.93%	\$20,493,173	21.10%
Asian Americans	115	10.13%	\$7,740,052	7.97%
Hispanic Americans	166	14.63%	\$8,175,092	8.42%
Native Americans	12	1.06%	\$2,617,224	2.70%
Caucasian Females	141	12.42%	\$4,198,193	4.32%
Caucasian Males	418	36.83%	\$53,881,183	55.49%
TOTAL	1,135	100.00%	\$97,104,917	100.00%

Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	63	5.55%	\$2,773,720	2.86%
African American Males	220	19.38%	\$17,719,453	18.25%
Asian American Females	9	0.79%	\$81,519	0.08%
Asian American Males	106	9.34%	\$7,658,533	7.89%
Hispanic American Females	15	1.32%	\$197,418	0.20%
Hispanic American Males	151	13.30%	\$7,977,674	8.22%
Native American Females	3	0.26%	\$804,302	0.83%
Native American Males	9	0.79%	\$1,812,922	1.87%
Caucasian Females	141	12.42%	\$4,198,193	4.32%
Caucasian Males	418	36.83%	\$53,881,183	55.49%
TOTAL	1,135	100.00%	\$97,104,917	100.00%

Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	90	7.93%	\$3,856,959	3.97%
Minority Males	486	42.82%	\$35,168,582	36.22%
Caucasian Females	141	12.42%	\$4,198,193	4.32%
Caucasian Males	418	36.83%	\$53,881,183	55.49%
TOTAL	1,135	100.00%	\$97,104,917	100.00%

Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
MBEs	576	50.75%	\$39,025,541	40.19%
WBEs	231	20.35%	\$8,055,152	8.30%
M/WBEs	717	63.17%	\$43,223,734	44.51%

Table 3.3
Construction Utilization
Fiscal Years 1991 - 92

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	44	16.60%	\$1,666,681	10.85%
Asian Americans	20	7.55%	\$646,008	4.21%
Hispanic Americans	53	20.00%	\$1,648,557	10.73%
Native Americans	1	0.38%	\$284,958	1.86%
Caucasian Females	37	13.96%	\$692,684	4.51%
Caucasian Males	110	41.51%	\$10,421,829	67.85%
TOTAL	265	100.00%	\$15,360,717	100.00%

Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	3	1.13%	\$166,625	1.08%
African American Males	41	15.47%	\$1,500,056	9.77%
Asian American Females	2	0.75%	\$7,600	0.05%
Asian American Males	18	6.79%	\$638,408	4.16%
Hispanic American Females	5	1.89%	\$31,286	0.20%
Hispanic American Males	48	18.11%	\$1,617,271	10.53%
Native American Females	1	0.38%	\$284,958	1.86%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	37	13.96%	\$692,684	4.51%
Caucasian Males	110	41.51%	\$10,421,829	67.85%
TOTAL	265	100.00%	\$15,360,717	100.00%

Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	11	4.15%	\$490,469	3.19%
Minority Males	107	40.38%	\$3,755,735	24.45%
Caucasian Females	37	13.96%	\$692,684	4.51%
Caucasian Males	110	41.51%	\$10,421,829	67.85%
TOTAL	265	100.00%	\$15,360,717	100.00%

Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
MBEs	118	44.53%	\$4,246,204	27.64%
WBEs	48	18.11%	\$1,183,153	7.70%
M/WBES	155	58.49%	\$4,938,888	32.15%

Table 3.4
Construction Utilization
Fiscal Years 1992 - 93

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	89	26.33%	\$7,909,441	18.17%
Asian Americans	40	11.83%	\$2,412,083	5.54%
Hispanic Americans	48	14.20%	\$2,985,339	6.86%
Native Americans	1	0.30%	\$518,296	1.19%
Caucasian Females	56	16.57%	\$1,900,543	4.37%
Caucasian Males	104	30.77%	\$27,804,534	63.87%
TOTAL	338	100.00%	\$43,530,236	100.00%

Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	24	7.10%	\$1,769,427	4.06%
African American Males	65	19.23%	\$6,140,014	14.11%
Asian American Females	5	1.48%	\$58,919	0.14%
Asian American Males	35	10.36%	\$2,353,164	5.41%
Hispanic American Females	6	1.78%	\$140,688	0.32%
Hispanic American Males	42	12.43%	\$2,844,651	6.55%
Native American Females	1	0.30%	\$518,296	1.19%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	56	16.57%	\$1,900,543	4.37%
Caucasian Males	104	30.77%	\$27,804,534	63.87%
TOTAL	338	100.00%	\$43,530,236	100.00%

Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	36	10.65%	\$2,487,330	5.71%
Minority Males	142	42.01%	\$11,337,829	26.05%
Caucasian Females	56	16.57%	\$1,900,543	4.37%
Caucasian Males	104	30.77%	\$27,804,534	63.87%
TOTAL	338	100.00%	\$43,530,236	100.00%

Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
MBEs	178	52.66%	\$13,825,159	31.76%
WBEs	92	27.22%	\$4,387,873	10.08%
M/WBEs	234	69.23%	\$15,725,702	36.13%

Table 3.5
Construction Utilization
Fiscal Years 1993 - 94

Ethnicity	Number	Percent	Amount	Percent
	of Contracts	of Contracts	of Dollars	of Dollars
African Americans	150	28.20%	\$10,917,051	28.57%
Asian Americans	55	10.34%	\$4,681,961	12.25%
Hispanic Americans	65	12.22%	\$3,541,196	9.27%
Native Americans	10	1.88%	\$1,813,970	4.75%
Caucasian Females	48	9.02%	\$1,604,966	4.20%
Caucasian Males	204	38.35%	\$15,654,820	40.97%
TOTAL	532	100.00%	\$38,213,963	100.00%

Ethnicity and Gender	Number	Percent	Amount	Percent
	of Contracts	of Contracts	of Dollars	of Dollars
African American Females	36	6.77%	\$837,668	2.19%
African American Males	114	21.43%	\$10,079,383	26.38%
Asian American Females	2	0.38%	\$15,000	0.04%
Asian American Males	53	9.96%	\$4,666,961	12.21%
Hispanic American Females	4	0.75%	\$25,444	0.07%
Hispanic American Males	61	11.47%	\$3,515,752	9.20%
Native American Females	1	0.19%	\$1,048	0.00%
Native American Males	9	1.69%	\$1,812,922	4.74%
Caucasian Females	48	9.02%	\$1,604,966	4.20%
Caucasian Males	204	38.35%	\$15,654,820	40.97%
TOTAL	532	100.00%	\$38,213,963	100.00%

Minority and Gender	Number	Percent	Amount	Percent
	of Contracts	of Contracts	of Dollars	of Dollars
Minority Females	43	8.08%	\$879,160	2.30%
Minority Males	237	44.55%	\$20,075,018	52.53%
Caucasian Females	48	9.02%	\$1,604,966	4.20%
Caucasian Males	204	38.35%	\$15,654,820	40.97%
TOTAL	532	100.00%	\$38,213,963	100.00%

Minority and Women	Number	Percent	Amount	Percent
	of Contracts	of Contracts	of Dollars	of Dollars
MBEs	280	52.63%	\$20,954,178	54.83%
WBEs	91	17.11%	\$2,484,126	6.50%
M/WBEs	328	61.65%	\$22,559,144	59.03%

Caucasian Females: While their number of contracts increased in 1992-93 to 16.5 percent of the construction contracts, from 13.9 the previous year, their percentage of the construction dollars remained fairly stable at over 4.3 percent.

Caucasian Males: Construction contracts and dollars decreased over the study period with their receiving 38.3 percent of the contracts and 40.9 percent of the dollars in 1993-94 (down from 41.5 percent and 67.8 percent, respectively in 1991-92).

Tables 3.6, 3.7, and 3.8 represent the utilization of construction firms as primes and on contracts less than and greater than \$100,000:

African Americans: Received 88 or 20.3 percent of the prime construction contracts during the study period, representing \$8,354,970 or 16.3 percent of the prime construction contract dollars. Sixty-six of those contracts were for amounts less than \$100,000, representing \$564,526 or 13 percent of the prime construction dollars. Twenty-two of those contracts were for amounts greater than \$100,000, representing \$7,790,444 or 16.6 percent of the prime construction dollars.

Asian Americans: Received 40 or 9.2 percent of the prime construction contracts during the study period, representing \$3,757,695 or 7.3 percent of the prime construction contract dollars. Twenty-nine of those contracts were for amounts less than \$100,000, representing \$359,033 or 8.2 percent of the prime construction dollars. Eleven of those contracts were for amounts greater than \$100,000, representing \$3,398,662 or 7.2 of the prime construction dollars.

Hispanic Americans: Received 82 or 18.9 percent of the prime construction contracts during the study period, representing \$3,358,573 or 6.5 percent of the prime construction contract dollars. Seventy-one of those contracts were for amounts less than \$100,000, representing \$793,816 or 18.3 of the prime construction dollars. Eleven of those contracts were for an amounts greater than \$100,000, representing \$2,564,757 or 5.4 of the prime construction dollars.

Native Americans: Received 10 or 2.3 percent of the prime construction contracts during the study period, representing \$1,813,970 or 3.5 percent of the prime construction contract dollars. Nine of those contracts were for amounts less than \$100,000, representing \$39,970 or .9 percent of the prime construction dollars. One of the contracts was for an amount greater than \$100,000, representing \$1,774,000 or 3.7 percent of the prime construction dollars.

Table 3.6
Construction Utilization of Prime Contracts
Fiscal Years 1991 - 94

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	88	20.37%	\$8,354,970	16.31%
Asian Americans	40	9.26%	\$3,757,695	7.33%
Hispanic Americans	82	18.98%	\$3,358,573	6.56%
Native Americans	10	2.31%	\$1,813,970	3.54%
Caucasian Females	3	0.69%	\$157,928	0.31%
Caucasian Males	209	48.38%	\$33,786,528	65.95%
TOTAL	432	100.00%	\$51,229,663	100.00%

Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	1	0.23%	\$142,500	0.28%
African American Males	87	20.14%	\$8,212,470	16.03%
Asian American Females	0	0.00%	\$0	0.00%
Asian American Males	40	9.26%	\$3,757,695	7.33%
Hispanic American Females	0	0.00%	\$0	0.00%
Hispanic American Males	82	18.98%	\$3,358,573	6.56%
Native American Females	1	0.23%	\$1,048	0.00%
Native American Males	9	2.08%	\$1,812,922	3.54%
Caucasian Females	3	0.69%	\$157,928	0.31%
Caucasian Males	209	48.38%	\$33,786,528	65.95%
TOTAL	432	100.00%	\$51,229,663	100.00%

Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	2	0.46%	\$143,548	0.28%
Minority Males	218	50.46%	\$17,141,660	33.46%
Caucasian Females	3	0.69%	\$157,928	0.31%
Caucasian Males	209	48.38%	\$33,786,528	65.95%
TOTAL	432	100.00%	\$51,229,663	100.00%

Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
MBEs	220	50.93%	\$17,285,208	33.74%
WBEs	5	1.16%	\$301,476	0.59%
M/WBEs	223	51.62%	\$17,443,136	34.05%

Table 3.7
Construction Utilization of Prime Contracts less than \$100,000
Fiscal Years 1991 - 94

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	66	19.88%	\$564,526	13.03%
Asian Americans	29	8.73%	\$359,033	8.29%
Hispanic Americans	71	21.39%	\$793,816	18.32%
Native Americans	9	2.71%	\$39,970	0.92%
Caucasian Females	2	0.60%	\$27,928	0.64%
Caucasian Males	155	46.69%	\$2,547,730	58.80%
TOTAL	332	100.00%	\$4,333,002	100.00%

Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	0	0.00%	\$0	0.00%
African American Males	66	19.88%	\$564,526	13.03%
Asian American Females	0	0.00%	\$0	0.00%
Asian American Males	29	8.73%	\$359,033	8.29%
Hispanic American Females	0	0.00%	\$0	0.00%
Hispanic American Males	71	21.39%	\$793,816	18.32%
Native American Females	1	0.30%	\$1,048	0.02%
Native American Males	8	2.41%	\$38,922	0.90%
Caucasian Females	2	0.60%	\$27,928	0.64%
Caucasian Males	155	46.69%	\$2,547,730	58.80%
TOTAL	332	100.00%	\$4,333,002	100.00%

Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	1	0.30%	\$1,048	0.02%
Minority Males	174	52.41%	\$1,756,297	40.53%
Caucasian Females	2	0.60%	\$27,928	0.64%
Caucasian Males	155	46.69%	\$2,547,730	58.80%
TOTAL	332	100.00%	\$4,333,002	100.00%

Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
MBEs	175	52.71%	\$1,757,345	40.56%
WBEs	3	0.90%	\$28,976	0.67%
M/WBEs	177	53.31%	\$1,785,273	41.20%

Table 3.8
Construction Utilization of Prime Contracts greater than \$100,000
Fiscal Years 1991 - 94

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	22	22.00%	\$7,790,444	16.61%
Asian Americans	11	11.00%	\$3,398,662	7.25%
Hispanic Americans	11	11.00%	\$2,564,757	5.47%
Native Americans	1	1.00%	\$1,774,000	3.78%
Caucasian Females	1	1.00%	\$130,000	0.28%
Caucasian Males	54	54.00%	\$31,238,798	66.61%
TOTAL	100	100.00%	\$46,896,661	100.00%

Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	1	1.00%	\$142,500	0.30%
African American Males	21	21.00%	\$7,647,944	16.31%
Asian American Females	0	0.00%	\$0	0.00%
Asian American Males	11	11.00%	\$3,398,662	7.25%
Hispanic American Females	0	0.00%	\$0	0.00%
Hispanic American Males	11	11.00%	\$2,564,757	5.47%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	1	1.00%	\$1,774,000	3.78%
Caucasian Females	1	1.00%	\$130,000	0.28%
Caucasian Males	54	54.00%	\$31,238,798	66.61%
TOTAL	100	100.00%	\$46,896,661	100.00%

Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	1	1.00%	\$142,500	0.30%
Minority Males	44	44.00%	\$15,385,363	32.81%
Caucasian Females	1	1.00%	\$130,000	0.28%
Caucasian Males	54	54.00%	\$31,238,798	66.61%
TOTAL	100	100.00%	\$46,896,661	100.00%

Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
MBEs	45	45.00%	\$15,527,863	33.11%
WBEs	2	2.00%	\$272,500	0.58%
M/WBEs	46	46.00%	\$15,657,863	33.39%

Caucasian Females: Received three of the prime construction contracts during the study period, representing \$157,928 or 0.3 percent of the prime construction contract dollars. Two of those contracts were for amounts less than \$100,000, representing \$27,928 or 0.6 of the prime construction dollars. One of those contracts was for an amount greater than \$100, representing \$130,000 or 0.2 percent of the prime construction dollars.

Caucasian Males: Received 209 prime construction contracts or 48.3 percent of the prime construction contracts during the study period, representing \$33,786,528 or 65.9 percent of the prime construction contract dollars. One hundred and fifty-five of those contracts were for amounts less than \$100,000, representing \$2,547,730 or 58.8 of the prime construction dollars. Fifty-four of those contracts were for amounts greater than \$100,000, representing \$31,238,798 or 66.6 percent of the prime construction contract dollars.

B. Architecture And Engineering Utilization – 1991-94

Table 3.9 depicts the City's utilization of architecture and engineering (A&E) firms for the three-year study period:

African Americans: Received 42 or 17 percent of the architecture and engineering contracts during the study period, representing \$1,272,346 or 12.4 percent of the architecture and engineering contract dollars.

Asian Americans: Received 34 or 13.7 percent of the architecture and engineering contracts during the study period, representing \$1,110,361 or 10.8 percent of the architecture and engineering contract dollars.

Hispanic Americans: Received nine or 3.6 percent of the architecture and engineering contracts during the study period, representing \$139,232 or 1.3 percent of the architecture and engineering dollars.

Native Americans: Received no architecture and engineering contracts during the study period.

Caucasian Females: Received 40 or 16.1 percent of the architecture and engineering contracts during the study period, representing \$760,987 or 7.4 percent of the architecture and engineering dollars.

Caucasian Males: Received 122 or 49.3 percent of the architecture and engineering contracts during the study period, representing \$6,920,952 or 67.8 percent of the architecture and engineering dollars.

Tables 3.10-3.12 detail architecture and engineering utilization by gender and ethnicity for each year in the study period.

African Americans: While the percentage of architecture and engineering contracts increased in 1992-93, over the previous year, the percentage declined from 19.3 percent in 1992-93 to 16.6 percent in 1993-94. Architecture and engineering contract dollars decreased between 1992-93 and 1993-94, from 14.8 to 13.4 percent, respectively.

Asian Americans: Architecture and engineering contracts and dollars decreased each successive year of the study period, with their receiving 9.5 percent of the architecture and engineering contracts in 1993-94 (down from 16.2 percent in 1991-92) and 5.7 percent of the architecture and engineering dollars in 1993-94 (down from 13.8 percent in 1991-92).

Hispanic Americans: Architecture and engineering contracts decreased between 1991-92 and 1993-94, with their receiving 2.3 percent of the architecture and engineering contracts and 0.4 percent of the architecture and engineering dollars (the percentages were 5.1 percent and one percent, respectively in 1991-92).

Native Americans: Received no architecture and engineering contracts during the study period.

Caucasian Females: While experiencing some increase in their percentage of architecture and engineering contracts and dollars in 1992-93 over the previous year, both percentages decreased in 1993-94. The percentage of architecture and engineering contracts decreased from 20.4 percent in 1992-93 to 16.6 percent in 1993-94. The percentage of architecture and engineering dollars decreased from 11 percent in 1992-93 to 9.7 percent in 1993-94.

Caucasian Males: The percentage of architecture and engineering contracts and dollars increased from 1992-93 to 1993-94. The percentage of architecture and engineering contracts increased from 45.4 percent in 1992-93 to 54.7 percent in 1993-94. The percentage of architecture and engineering dollars increased from 65.6 percent in 1992-93 to 70.6 percent in 1993-94.

Table 3.9
Architecture & Engineering Utilization
Fiscal Years 1991 - 94

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	42	17.00%	\$1,272,346	12.47%
Asian Americans	34	13.77%	\$1,110,361	10.88%
Hispanic Americans	9	3.64%	\$139,232	1.36%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	40	16.19%	\$760,987	7.46%
Caucasian Males	122	49.39%	\$6,920,952	67.83%
TOTAL	247	100.00%	\$10,203,878	100.00%

Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	4	1.62%	\$42,998	0.42%
African American Males	38	15.38%	\$1,229,348	12.05%
Asian American Females	10	4.05%	\$612,008	6.00%
Asian American Males	24	9.72%	\$498,353	4.88%
Hispanic American Females	0	0.00%	\$0	0.00%
Hispanic American Males	9	3.64%	\$139,232	1.36%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	40	16.19%	\$760,987	7.46%
Caucasian Males	122	49.39%	\$6,920,952	67.83%
TOTAL	247	100.00%	\$10,203,878	100.00%

Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	14	5.67%	\$655,006	6.42%
Minority Males	71	28.74%	\$1,866,933	18.30%
Caucasian Females	40	16.19%	\$760,987	7.46%
Caucasian Males	122	49.39%	\$6,920,952	67.83%
TOTAL	247	100.00%	\$10,203,878	100.00%

Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
MBEs	85	34.41%	\$2,521,939	24.72%
WBEs	54	21.86%	\$1,415,993	13.88%
M/WBEs	125	50.61%	\$3,282,926	32.17%

Table 3.10
Architecture & Engineering Utilization
Fiscal Years 1991 - 92

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	18	15.38%	\$728,591	11.31%
Asian Americans	19	16.24%	\$890,332	13.82%
Hispanic Americans	6	5.13%	\$68,377	1.06%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	15	12.82%	\$358,329	5.56%
Caucasian Males	59	50.43%	\$4,394,506	68.24%
TOTAL	117	100.00%	\$6,440,135	100.00%

Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	3	2.56%	\$34,998	0.54%
African American Males	15	12.82%	\$693,593	10.77%
Asian American Females	4	3.42%	\$527,360	8.19%
Asian American Males	15	12.82%	\$362,972	5.64%
Hispanic American Females	0	0.00%	\$0	0.00%
Hispanic American Males	6	5.13%	\$68,377	1.06%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	15	12.82%	\$358,329	5.56%
Caucasian Males	59	50.43%	\$4,394,506	68.24%
TOTAL	117	100.00%	\$6,440,135	100.00%

Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	7	5.98%	\$562,358	8.73%
Minority Males	36	30.77%	\$1,124,942	17.47%
Caucasian Females	15	12.82%	\$358,329	5.56%
Caucasian Males	59	50.43%	\$4,394,506	68.24%
TOTAL	117	100.00%	\$6,440,135	100.00%

Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
MBEs	43	36.75%	\$1,687,300	26.20%
WBEs	22	18.80%	\$920,687	14.30%
M/WBEs	58	49.57%	\$2,045,629	31.76%

Table 3.11
Architecture & Engineering Utilization
Fiscal Years 1992 - 93

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	17	19.32%	\$394,995	14.88%
Asian Americans	11	12.50%	\$156,611	5.90%
Hispanic Americans	2	2.27%	\$66,000	2.49%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	18	20.45%	\$294,530	11.09%
Caucasian Males	40	45.45%	\$1,742,542	65.64%
TOTAL	88	100.00%	\$2,654,678	100.00%

Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	1	1.14%	\$8,000	0.30%
African American Males	16	18.18%	\$386,995	14.58%
Asian American Females	4	4.55%	\$31,249	1.18%
Asian American Males	7	7.95%	\$125,362	4.72%
Hispanic American Females	0	0.00%	\$0	0.00%
Hispanic American Males	2	2.27%	\$66,000	2.49%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	18	20.45%	\$294,530	11.09%
Caucasian Males	40	45.45%	\$1,742,542	65.64%
TOTAL	88	100.00%	\$2,654,678	100.00%

Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	5	5.68%	\$39,249	1.48%
Minority Males	25	28.41%	\$578,357	21.79%
Caucasian Females	18	20.45%	\$294,530	11.09%
Caucasian Males	40	45.45%	\$1,742,542	65.64%
TOTAL	88	100.00%	\$2,654,678	100.00%

Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
MBEs	30	34.09%	\$617,606	23.26%
WBEs	23	26.14%	\$333,779	12.57%
M/WBEs	48	54.55%	\$912,136	34.36%

Table 3.12
Architecture & Engineering Utilization
Fiscal Years 1993 - 94

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	7	16.67%	\$148,760	13.41%
Asian Americans	4	9.52%	\$63,418	5.72%
Hispanic Americans	1	2.38%	\$4,855	0.44%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	7	16.67%	\$108,128	9.75%
Caucasian Males	23	54.76%	\$783,904	70.68%
TOTAL	42	100.00%	\$1,109,065	100.00%

Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	0	0.00%	\$0	0.00%
African American Males	7	16.67%	\$148,760	13.41%
Asian American Females	2	4.76%	\$53,399	4.81%
Asian American Males	2	4.76%	\$10,019	0.90%
Hispanic American Females	0	0.00%	\$0	0.00%
Hispanic American Males	1	2.38%	\$4,855	0.44%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	7	16.67%	\$108,128	9.75%
Caucasian Males	23	54.76%	\$783,904	70.68%
TOTAL	42	100.00%	\$1,109,065	100.00%

Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	2	4.76%	\$53,399	4.81%
Minority Males	10	23.81%	\$163,634	14.75%
Caucasian Females	7	16.67%	\$108,128	9.75%
Caucasian Males	23	54.76%	\$783,904	70.68%
TOTAL	42	100.00%	\$1,109,065	100.00%

Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
MBEs	12	28.57%	\$217,033	19.57%
WBEs	9	21.43%	\$161,527	14.56%
M/WBEs	19	45.24%	\$325,161	29.32%

Tables 3.13, 3.14, and 3.15 represent the utilization of architecture and engineering firms on prime contracts, and for contracts less than and greater than \$100,000:

African Americans: Received 31 or 14.9 percent of the prime architecture and engineering contracts during the study period, representing \$630,003 or 7.4 percent of the prime architecture and engineering contract dollars. Thirty of those contracts were for amounts less than \$100,000, representing \$515,004 or 16.5 percent of the prime architecture and engineering dollars. One of the prime architecture and engineering contracts was for an amount greater than \$100,000, representing \$114,999 or 2.1 percent of the prime architecture and engineering dollars.

Asian Americans: Received 22 or 10.5 percent of the prime architecture and engineering contracts during the study period, representing \$462,825 or 5.4 percent of the prime architecture and engineering dollars. Twenty-one of those contracts were for prime architecture and engineering contract amounts less than \$100,000, representing \$203,756 or 6.5 percent of the prime architecture and engineering dollars. One of those contracts was for an amount greater than \$100,000, representing \$259,069 or 4.8 percent of the prime architecture and engineering dollars.

Hispanic Americans: Received eight or 3.8 percent of the prime architecture and engineering contracts during the study period, representing \$113,232 or 1.3 percent of the prime architecture and engineering dollars. Eight of those contracts were for amounts less than \$100,000, representing \$113,232 or 3.6 percent of the prime architecture and engineering dollars. None of the prime architecture and engineering contracts were greater than \$100,000.

Native Americans: Received no architecture and engineering contracts during the study period.

Caucasian Females: Received 29 or 13.9 percent of the prime architecture and engineering contracts during the study period, representing \$443,405 or 5.2 percent of the prime architecture and engineering contract dollars. Twenty-eight of those contracts were for amounts less than \$100,000, representing \$332,895 or 10.7 percent of the prime architecture and engineering dollars. One of the prime architecture and engineering contracts was for an amount greater than \$100,000, representing \$110,510 or 2.0 percent of the prime architecture and engineering dollars.

Table 3.13
Architecture & Engineering Utilization of Prime Contracts
Fiscal Years 1991 - 94

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	31	14.90%	\$630,003	7.40%
Asian Americans	22	10.58%	\$462,825	5.44%
Hispanic Americans	8	3.85%	\$113,232	1.33%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	29	13.94%	\$443,405	5.21%
Caucasian Males	118	56.73%	\$6,860,865	80.62%
TOTAL	208	100.00%	\$8,510,330	100.00%

Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	4	1.92%	\$42,998	0.51%
African American Males	27	12.98%	\$587,005	6.90%
Asian American Females	7	3.37%	\$100,418	1.18%
Asian American Males	15	7.21%	\$362,407	4.26%
Hispanic American Females	0	0.00%	\$0	0.00%
Hispanic American Males	8	3.85%	\$113,232	1.33%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	29	13.94%	\$443,405	5.21%
Caucasian Males	118	56.73%	\$6,860,865	80.62%
TOTAL	208	100.00%	\$8,510,330	100.00%

Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	11	5.29%	\$143,416	1.69%
Minority Males	50	24.04%	\$1,062,644	12.49%
Caucasian Females	29	13.94%	\$443,405	5.21%
Caucasian Males	118	56.73%	\$6,860,865	80.62%
TOTAL	208	100.00%	\$8,510,330	100.00%

Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
MBEs	61	29.33%	\$1,206,060	14.17%
WBEs	40	19.23%	\$586,821	6.90%
M/WBEs	90	43.27%	\$1,649,465	19.38%

Table 3.14
Architecture & Engineering Utilization of Prime Contracts less than \$100,000
Fiscal Years 1991 - 94

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	30	15.54%	\$515,004	16.55%
Asian Americans	21	10.88%	\$203,756	6.55%
Hispanic Americans	8	4.15%	\$113,232	3.64%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	28	14.51%	\$332,895	10.70%
Caucasian Males	106	54.92%	\$1,946,077	62.56%
TOTAL	193	100.00%	\$3,110,964	100.00%

Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	4	2.07%	\$42,998	1.38%
African American Males	26	13.47%	\$472,006	15.17%
Asian American Females	7	3.63%	\$100,418	3.23%
Asian American Males	14	7.25%	\$103,338	3.32%
Hispanic American Females	0	0.00%	\$0	0.00%
Hispanic American Males	8	4.15%	\$113,232	3.64%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	28	14.51%	\$332,895	10.70%
Caucasian Males	106	54.92%	\$1,946,077	62.56%
TOTAL	193	100.00%	\$3,110,964	100.00%

Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	11	5.70%	\$143,416	4.61%
Minority Males	48	24.87%	\$688,576	22.13%
Caucasian Females	28	14.51%	\$332,895	10.70%
Caucasian Males	106	54.92%	\$1,946,077	62.56%
TOTAL	193	100.00%	\$3,110,964	100.00%

Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
MBEs	59	30.57%	\$831,992	26.74%
WBEs	39	20.21%	\$476,311	15.31%
M/WBEs	87	45.08%	\$1,164,887	37.44%

Table 3.15
Architecture & Engineering Utilization of Prime Contracts greater than \$100,000
Fiscal Years 1991 - 94

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	1	6.67%	\$114,999	2.13%
Asian Americans	1	6.67%	\$259,069	4.80%
Hispanic Americans	0	0.00%	\$0	0.00%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	1	6.67%	\$110,510	2.05%
Caucasian Males	12	80.00%	\$4,914,788	91.03%
TOTAL	15	100.00%	\$5,399,366	100.00%

Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	0	0.00%	\$0	0.00%
African American Males	1	6.67%	\$114,999	2.13%
Asian American Females	0	0.00%	\$0	0.00%
Asian American Males	1	6.67%	\$259,069	4.80%
Hispanic American Females	0	0.00%	\$0	0.00%
Hispanic American Males	0	0.00%	\$0	0.00%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	1	6.67%	\$110,510	2.05%
Caucasian Males	12	80.00%	\$4,914,788	91.03%
TOTAL	15	100.00%	\$5,399,366	100.00%

Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	0	0.00%	\$0	0.00%
Minority Males	2	13.33%	\$374,068	6.93%
Caucasian Females	1	6.67%	\$110,510	2.05%
Caucasian Males	12	80.00%	\$4,914,788	91.03%
TOTAL	15	100.00%	\$5,399,366	100.00%

Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
MBEs	2	13.33%	\$374,068	6.93%
WBEs	1	6.67%	\$110,510	2.05%
M/WBEs	3	20.00%	\$484,578	8.97%

Caucasian Males: Received 118 or 56.7 percent of the prime architecture and engineering contracts during the study period, representing \$6,860,865 or 80.6 percent of the prime architecture and engineering contract dollars. One hundred and six of those contracts were for amounts less than \$100,000, representing \$1,946,077 or 62.5 percent of the prime architecture and engineering dollars. Twelve of the prime architecture and engineering contracts were for amounts greater than \$100,000, representing \$4,914,788 or 91.0 percent of the prime architecture and engineering contract dollars.

C. Purchasing Utilization – 1991-94

The number and dollar amounts of purchasing contracts issued by the City during 1991-94 is depicted in Table 3.16:

African Americans: Received 897 or 17.1 percent of the purchasing contracts during the study period, representing \$2,407,715 or 4.1 percent of the purchasing contract dollars.

Asian Americans: Received 461 or 8.8 percent of the purchasing contracts during the study period, representing \$2,027,275 or 3.5 percent of the purchasing contract dollars.

Hispanic Americans: Received 79 or 1.5 percent of the purchasing contracts during the study period, representing \$846,171 or 1.4 percent of the purchasing contract dollars.

Native Americans: Received three or 0.06 percent of the purchasing contracts during the study period, representing \$742 or an insignificant percent of the purchasing contract dollars.

Caucasian Females: Received 342 or 6.5 percent of the purchasing contracts during the study period, representing \$2,884,701 or five percent of the purchasing contract dollars.

Caucasian Males: Received 3,457 or 65.9 percent of the purchasing contracts during the study period, representing \$49,283,205 or 85.7 percent of the purchasing contract dollars.

Tables 3.17, 3.18, and 3.19 show purchasing utilization for each year in the study period:

African Americans: Purchasing contracts and contract purchasing dollars increased between 1991-92 and 1993-94, with their receiving 20 percent of the purchase orders and 5.9 percent of the purchasing contract dollars the last year, compared to 15.8 and 3.1, respectively in 1991-92.

Asian Americans: Purchasing contracts and purchasing contract dollars decreased between 1991-92 and 1993-94, with their receiving 8.5 percent of the purchasing contracts and three percent of the purchasing contract dollars the last year, compared to 10.3 percent and 3.8 percent, respectively in 1991-92.

Hispanic Americans: Purchasing contracts and purchasing contract dollars were fairly stable over the study period, with their receiving about one percent of the purchasing contracts and one percent of the purchasing contract dollars in each study year.

Native Americans: Less than one percent of the purchasing contracts and purchasing contract dollars were received in each study year.

Caucasian Females: Purchasing contracts decreased between 1992-93 and 1993-94. The percentage of purchasing contract dollars in 1992-93 was 8.3 and in 1993-94 was 3.5 percent, about the same level as 1991-92.

Caucasian Males: After an increase in the percentage of purchasing contracts from 64.5 in 1991-92 to 70.4 in 1992-93, the percentage decreased to 63.4 in 1993-94. The percentage of purchasing contract dollars decreased from 88.4 in 1991-92 to 85.5 percent in 1993-94.

Tables 3.20 - 3.21 represent the utilization of vendors for purchasing contracts less than and greater than \$100,000:

African Americans: Received 897 or 17.4 percent of the purchasing contracts for amounts less than \$100,000 during the study period, representing \$2,407,715 or 8.9 percent of the dollars for purchasing contracts less than \$100,000. They received none of the purchasing contracts greater than \$100,000.

Asian Americans: Received 459 or 8.9 percent of the purchasing contracts less than \$100,000 during the study period, representing \$1,814,890 or 6.7 percent of the dollars for purchasing contracts less than \$100,000. They received 2 or 1.8 percent of the purchasing contracts greater than \$100,000, representing \$212,385 or 0.7 percent of the dollars for purchasing contracts over \$100,000.

Hispanic Americans: Received 78 or 1.5 percent of the purchasing contracts less than \$100,000 during the study period, representing \$556,171 or 2.0 percent of the dollars for purchasing contracts less than \$100,000. They received 1 or 0.9 percent of the purchasing contracts greater than \$100,000, representing \$290,000 or 0.9 percent of the dollars for purchasing contracts over \$100,000.

Table 3.16
Purchasing Utilization
Fiscal Years 1991 - 94

Ethnicity	Number	Percent	Amount	Percent
	of Contracts	of Contracts	of Dollars	of Dollars
African Americans	897	17.12%	\$2,407,715	4.19%
Asian Americans	461	8.80%	\$2,027,275	3.53%
Hispanic Americans	79	1.51%	\$846,171	1.47%
Native Americans	3	0.06%	\$742	0.00%
Caucasian Females	342	6.53%	\$2,884,701	5.02%
Caucasian Males	3,457	65.99%	\$49,283,205	85.78%
TOTAL	5,239	100.00%	\$57,449,809	100.00%

Ethnicity and Gender	Number	Percent	Amount	Percent
	of Contracts	of Contracts	of Dollars	of Dollars
African American Females	437	8.34%	\$842,187	1.47%
African American Males	460	8.78%	\$1,565,528	2.73%
Asian American Females	228	4.35%	\$1,022,525	1.78%
Asian American Males	233	4.45%	\$1,004,749	1.75%
Hispanic American Females	5	0.10%	\$16,000	0.03%
Hispanic American Males	74	1.41%	\$830,171	1.45%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	3	0.06%	\$742	0.00%
Caucasian Females	342	6.53%	\$2,884,701	5.02%
Caucasian Males	3,457	65.99%	\$49,283,205	85.78%
TOTAL	5,239	100.00%	\$57,449,809	100.00%

Minority and Gender	Number	Percent	Amount	Percent
	of Contracts	of Contracts	of Dollars	of Dollars
Minority Females	670	12.79%	\$1,880,712	3.27%
Minority Males	770	14.70%	\$3,401,191	5.92%
Caucasian Females	342	6.53%	\$2,884,701	5.02%
Caucasian Males	3,457	65.99%	\$49,283,205	85.78%
TOTAL	5,239	100.00%	\$57,449,809	100.00%

Minority and Women	Number	Percent	Amount	Percent
	of Contracts	of Contracts	of Dollars	of Dollars
MBEs	1,440	27.49%	\$5,281,903	9.19%
WBEs	1,012	19.32%	\$4,765,413	8.29%
M/WBEs	1,782	34.01%	\$8,166,604	14.22%

Table 3.17
Purchasing Utilization
Fiscal Years 1991 - 92

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	248	15.81%	\$471,258	3.15%
Asian Americans	163	10.39%	\$578,003	3.86%
Hispanic Americans	30	1.91%	\$193,268	1.29%
Native Americans	1	0.06%	\$242	0.00%
Caucasian Females	114	7.27%	\$481,136	3.22%
Caucasian Males	1,013	64.56%	\$13,231,195	88.47%
TOTAL	1,569	100.00%	\$14,955,103	100.00%

Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	139	8.86%	\$201,591	1.35%
African American Males	109	6.95%	\$269,667	1.80%
Asian American Females	84	5.35%	\$255,925	1.71%
Asian American Males	79	5.04%	\$322,078	2.15%
Hispanic American Females	3	0.19%	\$13,000	0.09%
Hispanic American Males	27	1.72%	\$180,268	1.21%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	1	0.06%	\$242	0.00%
Caucasian Females	114	7.27%	\$481,136	3.22%
Caucasian Males	1,013	64.56%	\$13,231,195	88.47%
TOTAL	1,569	100.00%	\$14,955,103	100.00%

Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	226	14.40%	\$470,517	3.15%
Minority Males	216	13.77%	\$772,255	5.16%
Caucasian Females	114	7.27%	\$481,136	3.22%
Caucasian Males	1,013	64.56%	\$13,231,195	88.47%
TOTAL	1,569	100.00%	\$14,955,103	100.00%

Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
MBEs	442	28.17%	\$1,242,772	8.31%
WBEs	340	21.67%	\$951,653	6.36%
M/WBEs	556	35.44%	\$1,723,908	11.53%

Table 3.18
Purchasing Utilization
Fiscal Years 1992 - 93

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	247	14.85%	\$537,692	2.84%
Asian Americans	126	7.58%	\$726,287	3.84%
Hispanic Americans	24	1.44%	\$196,299	1.04%
Native Americans	1	0.06%	\$289	0.00%
Caucasian Females	94	5.65%	\$1,574,741	8.33%
Caucasian Males	1,171	70.41%	\$15,876,046	83.95%
TOTAL	1,663	100.00%	\$18,911,354	100.00%

Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	123	7.40%	\$236,196	1.25%
African American Males	124	7.46%	\$301,495	1.59%
Asian American Females	68	4.09%	\$370,861	1.96%
Asian American Males	58	3.49%	\$355,426	1.88%
Hispanic American Females	1	0.06%	\$1,500	0.01%
Hispanic American Males	23	1.38%	\$194,799	1.03%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	1	0.06%	\$289	0.00%
Caucasian Females	94	5.65%	\$1,574,741	8.33%
Caucasian Males	1,171	70.41%	\$15,876,046	83.95%
TOTAL	1,663	100.00%	\$18,911,354	100.00%

Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	192	11.55%	\$608,558	3.22%
Minority Males	206	12.39%	\$852,009	4.51%
Caucasian Females	94	5.65%	\$1,574,741	8.33%
Caucasian Males	1,171	70.41%	\$15,876,046	83.95%
TOTAL	1,663	100.00%	\$18,911,354	100.00%

Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
MBEs	398	23.93%	\$1,460,567	7.72%
WBEs	286	17.20%	\$2,183,298	11.54%
M/WBEs	492	29.59%	\$3,035,308	16.05%

Table 3.19
Purchasing Utilization
Fiscal Years 1993 - 94

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	402	20.03%	\$1,398,765	5.93%
Asian Americans	172	8.57%	\$722,985	3.07%
Hispanic Americans	25	1.25%	\$456,604	1.94%
Native Americans	1	0.05%	\$211	0.00%
Caucasian Females	134	6.68%	\$828,824	3.51%
Caucasian Males	1,273	63.43%	\$20,175,963	85.55%
TOTAL	2,007	100.00%	\$23,583,352	100.00%

Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	175	8.72%	\$404,399	1.71%
African American Males	227	11.31%	\$994,366	4.22%
Asian American Females	76	3.79%	\$395,739	1.68%
Asian American Males	96	4.78%	\$327,246	1.39%
Hispanic American Females	1	0.05%	\$1,500	0.01%
Hispanic American Males	24	1.20%	\$455,104	1.93%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	1	0.05%	\$211	0.00%
Caucasian Females	134	6.68%	\$828,824	3.51%
Caucasian Males	1,273	63.43%	\$20,175,963	85.55%
TOTAL	2,007	100.00%	\$23,583,352	100.00%

Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	252	12.56%	\$801,638	3.40%
Minority Males	348	17.34%	\$1,776,927	7.53%
Caucasian Females	134	6.68%	\$828,824	3.51%
Caucasian Males	1,273	63.43%	\$20,175,963	85.55%
TOTAL	2,007	100.00%	\$23,583,352	100.00%

Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
MBEs	600	29.90%	\$2,578,565	10.93%
WBEs	386	19.23%	\$1,630,462	6.91%
M/WBEs	734	36.57%	\$3,407,389	14.45%

Native Americans: Received three or 0.06 percent of the purchasing contracts less than \$100,000 during the study period, representing \$742 or an insignificant percent of the dollars for purchasing contracts less than \$100,000. They received none of the purchasing contracts greater than \$100,000.

Caucasian Females: Received 336 or 6.5 percent of the purchasing contracts less than \$100,000 during the study period, representing \$1,625,195 or six percent of the dollars for purchasing contracts less than \$100,000. They received six or 5.5 percent of the purchasing contracts greater than \$100,000, representing \$1,259,506 or 4.1 percent of the dollars for purchasing contracts over \$100,000.

Caucasian Males: Received 3,357 or 65.4 percent of the purchasing contracts less than \$100,000 during the study period, representing \$20,531,826 or 76.22 percent of the purchasing contracts less than \$100,000. They received 100 or 91.7 percent of the purchasing contracts greater than \$100,000, representing \$28,751,379 or 94.2 percent of the dollars for purchasing contracts over \$100,000.

IV. MARKET AREA ANALYSIS

A. Legal Criteria for Market Area

Croson was explicit that “in the local construction market”² was the appropriate geographical framework to perform the statistical comparison of business availability and business utilization. Unfortunately, the Court was less clear about the crucial issue of how to determine this “local market,” leaving to the lower courts the adjudication of whether competing definitions of this concept are constitutionally appropriate.

The lower courts have turned predominantly to employment discrimination cases to determine the relevant market. While obvious adjustments in terms used and participants involved must be made, these cases have offered the federal courts a wealth of examples from which to draw.³ In so doing, the courts applying *Croson* have made this Title VII analysis their own.

The body of cases examining market area for *Croson* purposes support a definition of market area that is merely reasonable.⁴ Consistent with *Croson*’s requirement that the sponsoring jurisdiction has been either an active or passive contributor to discrimination against the

² *Id.* at 510

³ See Schlei & Grossman, *Employment Discrimination Law* 1356-1364 (1985) for a heavily annotated discussion of statistical method in determining market area for employment discrimination purposes.

⁴ See, e.g., *Concrete Works*, 36 F.3d 1513, 1528 (10th Cir. 1994).

Table 3.20
Purchasing Utilization of Contracts less than \$100,000
Fiscal Years 1991 - 94

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	897	17.49%	\$2,407,715	8.94%
Asian Americans	459	8.95%	\$1,814,890	6.74%
Hispanic Americans	78	1.52%	\$556,171	2.06%
Native Americans	3	0.06%	\$742	0.00%
Caucasian Females	336	6.55%	\$1,625,195	6.03%
Caucasian Males	3,357	65.44%	\$20,531,826	76.22%
TOTAL	5,130	100.00%	\$26,936,539	100.00%

Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	437	8.52%	\$842,187	3.13%
African American Males	460	8.97%	\$1,565,528	5.81%
Asian American Females	228	4.44%	\$1,022,525	3.80%
Asian American Males	231	4.50%	\$792,364	2.94%
Hispanic American Females	5	0.10%	\$16,000	0.06%
Hispanic American Males	73	1.42%	\$540,171	2.01%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	3	0.06%	\$742	0.00%
Caucasian Females	336	6.55%	\$1,625,195	6.03%
Caucasian Males	3,357	65.44%	\$20,531,826	76.22%
TOTAL	5,130	100.00%	\$26,936,539	100.00%

Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	670	13.06%	\$1,880,712	6.98%
Minority Males	767	14.95%	\$2,898,806	10.76%
Caucasian Females	336	6.55%	\$1,625,195	6.03%
Caucasian Males	3,357	65.44%	\$20,531,826	76.22%
TOTAL	5,130	100.00%	\$26,936,539	100.00%

Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
MBEs	1,437	28.01%	\$4,779,518	17.74%
WBEs	1,006	19.61%	\$3,505,907	13.02%
M/WBEs	1,773	34.56%	\$6,404,713	23.78%

Table 3.21
Purchasing Utilization of Contracts greater than \$100,000
Fiscal Years 1991 - 94

Ethnicity	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African Americans	0	0.00%	\$0	0.00%
Asian Americans	2	1.83%	\$212,385	0.70%
Hispanic Americans	1	0.92%	\$290,000	0.95%
Native Americans	0	0.00%	\$0	0.00%
Caucasian Females	6	5.50%	\$1,259,506	4.13%
Caucasian Males	100	91.74%	\$28,751,379	94.23%
TOTAL	109	100.00%	\$30,513,270	100.00%

Ethnicity and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
African American Females	0	0.00%	\$0	0.00%
African American Males	0	0.00%	\$0	0.00%
Asian American Females	0	0.00%	\$0	0.00%
Asian American Males	2	1.83%	\$212,385	0.70%
Hispanic American Females	0	0.00%	\$0	0.00%
Hispanic American Males	1	0.92%	\$290,000	0.95%
Native American Females	0	0.00%	\$0	0.00%
Native American Males	0	0.00%	\$0	0.00%
Caucasian Females	6	5.50%	\$1,259,506	4.13%
Caucasian Males	100	91.74%	\$28,751,379	94.23%
TOTAL	109	100.00%	\$30,513,270	100.00%

Minority and Gender	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
Minority Females	0	0.00%	\$0	0.00%
Minority Males	3	2.75%	\$502,385	1.65%
Caucasian Females	6	5.50%	\$1,259,506	4.13%
Caucasian Males	100	91.74%	\$28,751,379	94.23%
TOTAL	109	100.00%	\$30,513,270	100.00%

Minority and Women	Number of Contracts	Percent of Contracts	Amount of Dollars	Percent of Dollars
MBEs	3	2.75%	\$502,385	1.65%
WBEs	6	5.50%	\$1,259,506	4.13%
M/WBEs	9	8.26%	\$1,761,891	5.77%

types of businesses intended to benefit from enterprise programs,⁵ the critical inquiry in determining market area is rather simple. The government entity must determine in what geographic area it has conducted a significant portion of its business. The lower courts have repeatedly made clear that the relevant market area for *Croson* purposes need *not* be confined to the simple "jurisdictional boundaries" of the enacting government entity if this entity's contracting activities that have "visited discrimination" on intended program beneficiaries⁶ have gone beyond those boundaries.⁷ Therefore, a "market area" for *Croson* purposes can be safely defined as the geographic area accounting for a substantial or predominant volume of a government entity's contracting activities.

B. Determination of Market Area

Contractors were sorted by city and the cities are ranked by those receiving the largest number of contract dollars to those receiving the smaller amount of contract dollars. It was then determined the percentage of the total contract number each city received. Table 3.22 shows that businesses in Oakland received 42.6 percent of the dollars.

For this study, the City of Oakland is selected as the market area. This is justified because the City of Oakland and the Redevelopment Agency have, since February, 1993, encouraged the participation of small local businesses through the Small Local Business Enterprise Construction Service Program (described in Part Two). Construction contracts account for more than \$100 million during the three year study period.

Table 3.22. Market Area 1991-94

City	Amount	Percentage
Oakland	\$ 70,115,089	42.6
Balance of Cities	\$ 94,643,515	57.4
Total	\$164,758,604	100.0

⁵ *Coral Construction*, 941 F.2d at 922

⁶ This is the wording of the Ninth Circuit Court of Appeals in *AGCC v. City and County of San Francisco*, 813 F.2d 922, 934 (9th Cir 1987)

⁷ See *Coral Construction*, 941 F.2d at 917, *Concrete Works*, 823 F. Supp. at 836

V. AVAILABILITY ANALYSIS

When considering sources for determining the number and percent of ready, willing and able M/WBEs, the selection must be based on whether the source(s) can gauge two significant aspects about the population in question. The first aspect has to do with a firm's interest in doing business with an entity, as implied by the term "ready and willing." The second aspect that should be considered is a firm's qualifications or capabilities in providing a service or good.

With respect to gauging interest, the challenge lies in finding a source that will include all interested businesses, M/WBEs and non-M/WBEs. One obvious source is an agency's bidder/proposer/vendor list(s). The assumption in using this source is that a business that is interested in doing business with an entity will place itself on this list and thus the list will include all businesses that have expressed an interest in contracting with an entity. However, this assumption is not necessarily valid because there are businesses that may be interested in doing business with an agency, but for whatever reason, may not be included in the list. For instance, our research for this study revealed that because of perceived barriers or discrimination, some M/WBEs did not bother to place themselves on the City's list(s).

The second aspect involves a consideration of a firm's qualifications, capability, or capacity. The primary difficulty lies in establishing the criteria for determining whether a firm is qualified or capable of providing a service or good because this criteria will vary by contracting category as well as by agency and project/contract scope. The other significant constraint is that the availability of qualified M/WBEs is necessarily affected by the discrimination that the statistical test is intended to ascertain. In other words, the discrimination as detailed in the Oral History section of this report has affected the ability of M/WBEs to develop and become as "qualified" as their non-M/WBE counterparts. Therefore, any adjustment for firm qualifications or capabilities will result in an under-inclusive or deflated estimate of the availability of M/WBEs. On the other hand, an attempt to pre-qualify firms in different categories inflates our estimate of availability.

Methodology and Sources for Determining Availability of M/WBEs

As mentioned earlier, the City and Redevelopment Agency's various lists of businesses, such as bidder/proposer/vendor mailing lists, are potential sources for determining the availability of interested businesses. Again, however, these lists may not include all businesses, M/WBEs and non-M/WBEs, that may be interested in doing business with the City and Redevelopment Agency.

In an attempt to capture all businesses that may be interested in doing business with the City and Redevelopment, bidder/proposer/vendor listings from other public agencies and local

government agencies located within the relevant market area were collected. Further, to ensure the inclusion of all M/WBEs that are interested in City and Redevelopment Agency contracting, but who did not include themselves in the agency list(s), directories of certified M/WBEs from other public agencies were also collected for our availability study.

The first step in the availability research process was to eliminate duplicate businesses from all of the aforementioned sources. A cross-checking process of the public agency sources, including the City's lists, was implemented to isolate unique businesses using, at a minimum, the **company name** as the primary category of information or field along with the following secondary fields: **address**, **ethnicity of owner(s)**, and **type of business**. If there was a match between the primary fields, i.e. in company name, but a discrepancy in at least two of the secondary fields, then the businesses were considered unique. If there was a match in the company name, and a match in at least two of the secondary fields, then those businesses would be considered duplicated or repeated. The cross-checking revealed that non-M/WBEs are more likely to place themselves on bidder/proposer/vendor lists with various public agencies than M/WBEs because of the higher rate of duplication or repetition of non-M/WBEs in the public agency lists.

The next step in the research process was to collect information about a firm's qualifications/capacity as well as to verify whether these interested firms were still in business. A survey questionnaire was developed to obtain information about a sample of firm's qualifications and capacity. The responses were then entered into an availability database. Pertinent information that could be extracted from the various sources, such as type of business, was also added to the availability database. This source of information is biased towards currently existing firms, as some of those existing in previous years may have since gone out of business.

The other significant constraint, as mentioned before, is that any current estimate of M/WBE availability is undoubtedly biased downward because the estimate does not take into account the number of M/WBEs that would have been in business had it not been for barriers or discrimination. Using current estimates of M/WBE availability would not only perpetuate the effects of such discrimination, but it would also contradict the primary objective of minority participation programs — to remedy or redress this historical discrimination. However, the Courts consider adjustments in the availability estimate to account for the M/WBEs that would have been in business "but for discrimination" to be "sheer speculation."

VI. PROFILE OF LOCAL BUSINESS COMMUNITY

A. Overview

Croson indicates that the evidence required to support the government's conclusion that race based remedial action is warranted, must address the issue of the availability of businesses

qualified to perform its contracts. As the Court framed the disparity analysis, the question is the “number of qualified minority contractors willing and able to perform a particular service” compared to the number that have been “actually engaged” by the jurisdiction.⁸ A survey was undertaken for this disparity study to gauge the capacity of Oakland businesses to perform work for the City of Oakland and the Oakland Redevelopment Agency. Several measures were used to assess business capacity. They include: prime or subcontractor status, number of years in business, number of employees, gross receipts, size of contracts received, and education level of the owner.

Telephone contact was initiated with 1,004 Oakland-based businesses identified as available during the disparity study and through an additional outreach effort to encourage more Asian and Hispanic business owner participation. Both M/WBEs and non-M/WBEs were contacted. Survey responses are listed in Table 3.23.

Table 3.23. Response to Survey

Response	Number of Firms
Refused to participate	117
Left message with no return call or unable to contact	532
Have sought work with the City of Oakland	355
Total contacts	1004

B. Capacity Sample

Business owners were asked if they had ever sought work or had an interest in working for the City of Oakland or Redevelopment Agency. If they had no interest, the interview was terminated. Those seeking such work or interested were interviewed. Three hundred and fifty-five had sought or had an interest in City or Redevelopment Agency work. All of those business owners agreed to participate in the capacity survey.

Table 3.24 depicts ethnicity and gender of the study sample. Caucasians comprised the largest race/ethnicity group in the sample (54.4 percent), followed by African Americans (20.8 percent), Asian Americans (18.3 percent), and Hispanic Americans (6.5 percent). There are no Native Americans in the sample.

⁸

488 U.S. at 509.

In terms of gender groups Caucasian males are the largest percentage at 43.0 percent, minority males are 37.5 percent, Caucasian females are 11.3 percent and minority females 8.2 percent.

Table 3.24. Survey Sample

Ethnicity	Sample Distribution (%)
African American	20.8
Asian American	18.3
Hispanic American	6.5
Native American	0
Caucasian	54.4
Total number	355
Gender	Sample Distribution (%)
Minority Males	37.5
Minority Females	8.2
Caucasian Males	43.0
Caucasian Females	11.3
Total Number	355

C. Questions

For this survey, various measures of size, resources, and owner capability were requested. Telephone interviews were conducted and the following questions were asked:

- Do you work as a prime or subcontractor?
- What was your business's largest number of employees in the previous 12 months?
- How many years have you been in business?
- How much was the largest contract your company has ever been awarded and what was the nature of the service?

- What were your gross receipts during the previous 24 months?
- What is your highest education level?
- What is race/ethnicity and gender of business owner?

Each of the questions is listed, followed by a discussion and supporting table. A test of independence was also done for each question. The factors are independent if the P-value is greater than 0.05. If the P-value is less than 0.05 the factors have some degree of dependence. For Table 3.27, for example, the number of years a company has been in business is very dependent on the owner's race/ethnicity.

A. Do you work as a prime only, subcontractor only, or both?

1. Business Tier by Owner Race/Ethnicity.

Hispanic and Caucasian male and female business owners more frequently work (only) as primes than any of the other groups (38.9 percent and 31.5 percent, respectively). Only 17.7 percent of African American companies work as primes only. Caucasian male- and female-owned companies work as subcontractors only at the lowest rate of any group. (Table 3.25). Business tier and owner race/ethnicity were found to be independent factors. For 129 companies this question was not applicable. Fourteen business owners refused to answer.

Table 3.25. Business Tier by Owner Race/Ethnicity

Business Tier	Businesses (%)			
	African American	Asian American	Hispanic American	Caucasian
Prime Contractor	17.7	25.6	38.9	31.5
Subcontractor Only	24.2	20.9	33.3	14.6
Both Prime and Subcontractor	58.1	53.5	27.8	53.9
Total	62	43	18	89

Test of independence between Prime/Subcontractor status and ethnicity: P-value is 0.147.

2. Business Tier by Owner Gender.

Minority-owned companies worked as subcontractors more frequently than Caucasian-owned companies. Majority female-owned companies were more likely than any other group to work as both a prime and a subcontractor (57.9 percent). Business tier and owner gender were found to be independent factors. (Table 3.26).

Table 3.26. Business Tier by Owner Gender

Business Tier	Businesses (%)			
	Minority Males	Minority Females	Majority Males	Majority Females
Prime Contractor Only	23.3	25.0	32.9	26.3
Subcontractor Only	24.3	25.0	14.3	15.8
Both Prime and Subcontractor	52.4	50.0	52.9	57.9
Total	103	20	70	19

Test of independence between Prime/Subcontractor status and M/WBE: P-value is 0.672.

B. How many years have you been in business?

1. Number of Years in Business by Owner Race/Ethnicity.

Asian American businesses have the greatest tendency towards young businesses (under 15 years old). Caucasian businesses tend to be old; with only 6.4 percent under 5 years and 46.6 percent over 31 years. African Americans and Hispanic Americans had significant percentages of businesses in the 26 to 30 years old category. Five business owners refused to answer. Years in business and owner race/ethnicity were found to be highly dependent factors. (Table 3.27).

Table 3.27. Number of Years in Business by Owner Race/Ethnicity

Number of Years In Business	Businesses (%)			
	African American	Asian American	Hispanic American	Caucasian
1 - 5	16.4	27.7	13.0	6.4
6 - 10	28.8	26.2	21.7	5.3
11 - 15	20.6	24.6	17.4	14.8
16 - 20	12.3	9.2	26.1	10.1
21 - 25	2.7	1.5	4.4	7.9
26 - 30	10.9	6.2	13.0	8.9
31 +	8.2	4.6	4.4	46.6
Total	73	65	23	189

Test of independence between years in business and ethnicity: P-value is 3.228E-15.

2. Number of Years in Business by Owner Gender.

Minority female-owned businesses are mostly 10 years old or younger (55 percent). Majority male-owned companies tend to be older with more than 60 percent of the companies over 26 years old. Minority male companies, however, had 66.6 percent under 15 years old. Majority male and female-owned companies had a significant percent in the over 31 years range. Years in business and owner gender were found to be highly dependent factors. (Table 3.28).

Table 3.28. Number of Years in Business by Owner Gender

Number of Years In Business	Businesses (%)			
	Minority Males	Minority Females	Majority Males	Majority Females
1 - 5	22.7	10.3	2.0	22.5
6 - 10	22.7	44.8	4.7	7.5
11 - 15	21.2	24.1	14.8	15.0
16 - 20	14.4	6.9	9.4	12.5
21 - 25	3.0	0.0	8.7	5.0
26 - 30	8.3	13.8	10.7	2.5
31 +	7.6	0.0	49.7	35.0
Total Number	132	29	149	40

Test of independence between years in business and M/WBE: P-value is 1.314E-18.

C. What was your largest number of employees in the previous 12 months?

1. Largest Number of Employees by Owner Race/Ethnicity.

Over 60 percent of the Hispanic American-owned companies employed five or fewer employees. Businesses with Caucasian owners were the largest of all groups using the number of employees criteria. Almost 30 percent of the companies employed 21 or more people. The number of employees and owner race/ethnicity were found to be dependent factors. (Table 3.29).

Table 3.29. Number of Employees by Owner Race/Ethnicity

Number of Employees	Businesses (%)			
	African American	Asian American	Hispanic American	Caucasian
1 - 5	38.0	48.4	60.9	25.1
6 - 10	25.4	20.3	13.0	21.4
11 - 15	12.7	15.6	4.4	15.5
16 - 20	5.6	1.6	4.4	8.0
21 +	18.3	14.0	17.4	29.9
Total Number	71	64	23	187

Test of independence between number of employees and ethnicity: P-value is .008.

2. Largest Number of Employees by Owner Gender.

Over 62 percent of minority female-owned businesses had fewer than five employees. Majority male-owned companies have larger businesses than the other groups, with 35.1 percent having 21 or more employees. Number of employees and owner gender were highly dependent factors. (Table 3.30).

Table 3.30. Number of Employees by Owner Gender

Number of Employees	Businesses (%)			
	Minority Males	Minority Females	Majority Males	Majority Females
1 - 5	41.9	62.9	17.6	53.9
6 - 10	25.2	3.7	19.6	28.2
11 - 15	11.5	18.5	17.6	7.7
16 - 20	4.6	0.0	10.1	0.0
21 +	16.8	14.8	35.1	10.3
Total Number	131	27	148	39

Test of independence between number of employees and M/WBE: P-value is 6.667E-08.

D. What were your gross receipts during the previous 24 months?

1. Gross Receipts in Past 24 Months by Race/Ethnicity.

Thirty three percent of the Hispanic American firms had gross receipts in the past 24 months that were less than \$199,000. Most businesses in the other groups earned \$500,000 or more. However, Caucasians outstripped the other groups with 80.6 percent of businesses grossing \$500,000 dollars or more. Thirty two business owners refused to answer the question. Gross receipts and owner race/ethnicity were found to be highly dependent factors. (Table 3.31).

Table 3.31. Gross Receipts Past 24 Months by Race/Ethnicity

Gross Receipts (Thousands \$)	Businesses (%)			
	African American	Asian American	Hispanic American	Caucasian
Less than 50	10.1	9.5	0.0	1.2
50 - 99	0.00	6.4	14.3	2.9
100 - 199	13.0	7.90	19.1	4.7
200 - 299	14.5	12.7	4.8	3.5
300 - 399	7.3	6.4	4.8	2.9
400 - 499	2.9	4.8	9.5	4.1
500+	52.2	52.4	47.6	80.6
Total Number	69	63	21	170

Test of independence between gross receipts and ethnicity: P-value is 1.036E-05.

2. Gross Receipts in Past 24 Months by Owner Gender.

Approximately 33 percent of minority females grossed \$199,000 or less in the past 24 months. Only about 40 percent of that group grossed more than \$500,000 during the period. Over 80 percent of majority-male owned companies, 53.9 percent of minority male-owned companies, and 40.7 percent of minority female-owned companies grossed \$500,000 or more. Gross receipts and owner gender were highly dependent factors. (Table 3.32).

Table 3.32. Gross Receipts Past 24 Months by Owner Gender

Gross Receipts (Thousands \$)	Businesses (%)			
	Minority Males	Minority Females	Majority Males	Majority Females
Less than 50	8.7	7.4	0.8	2.6
50 - 99	3.9	7.4	1.5	7.9
100 - 199	10.3	18.5	1.5	15.8
200 - 299	12.7	11.1	2.3	7.9
300 - 399	7.1	3.7	3.0	2.6
400 - 499	3.1	11.1	3.0	7.9
500+	53.9	40.7	87.9	55.3
Total Number	126	27	132	38

Test of independence between gross receipts and M/WBE: P-value is 1.411E-06.

E. How much was the largest contract your company has ever been awarded?

1. Amount of Largest Contract By Owner Race/Ethnicity.

African American business owners have received small and large contracts, as have Caucasian business owners. However, African American firms had fewer small contracts and a greater percentage of the largest contracts when compared to Asian- and Hispanic-owned businesses. Hispanic-owned businesses had the greatest rate of small contracts with over 45 percent of the businesses having their largest contracts under \$50,000, and only 18 percent of the businesses having their largest contracts over \$600,000. Twenty nine business owners refused to answer the question. Largest contract and owner race/ethnicity were independent factors. (Table 3.33).

Table 3.33. Amount of Largest Contract by Owner Race/ethnicity

Dollar Amounts (Thousands \$)	Businesses (%)			
	African American	Asian American	Hispanic American	Caucasian
Less than 50	20.9	42.2	45.5	37.6
50 - 99	4.5	4.7	13.6	9.8
100 - 199	11.9	7.8	13.6	13.9
200 - 299	8.9	4.7	4.6	5.8
300 - 399	7.5	0.0	0.0	3.5
400 - 499	8.9	3.1	0.0	1.7
500 - 599	3.0	4.7	4.5	5.8
600 +	34.3	32.8	18.2	21.9
Total Number	67	64	22	173

Test of independence between contract size and ethnicity: P-value is 0.064.

2. Amount of Largest Contract By Owner Gender.

Minority males more frequently received a largest contract of \$600,000 or more than any other gender group. Minority females received contracts under \$50,000 more frequently than all other groups with 48 percent. Largest contract and owner gender were independent factors. (Table 3.34).

Table 3.34. Amount of Largest Contract by Owner Gender

Dollar Amounts (Thousand \$)	Businesses (%)			
	Minority Males	Minority Females	Majority Males	Majority Females
Less than 50	30.5	48.0	39.4	30.6
50 - 99	5.5	8.0	9.5	11.1
100 - 199	10.2	12.0	11.7	22.2
200 - 299	6.3	8.0	5.1	8.3
300 - 399	3.1	4.0	3.7	2.8
400 - 499	4.7	8.0	2.2	0.0
500 - 599	3.1	8.0	5.8	5.6
600 +	36.7	4.0	22.6	19.4
Total Number	128	25	137	36

Test of independence between contract size and M/WBE: P-value is 0.213.

F. What is your highest educational level?

1. Highest Level of Owner Education by Race/Ethnicity.

Asian American business owners have the highest level of education, with 87.7 percent being college graduates. Hispanic American business owners had the lowest level of college education. That group also has the highest percent of business owners that have not graduated from high school. Owner education level and owner race/ethnicity were found to be dependent factors. Twenty two businesses refused to answer. (Table 3.35).

Table 3.35. Highest Level of Owner Education by Race/Ethnicity

Educational Level	Owners (%)			
	African American	Asian American	Hispanic American	Caucasian
Not a High School Graduate	2.90	0.0	13.0	2.3
High School Graduate Only	7.4	6.2	21.7	10.2
Some College	26.5	6.2	21.7	13.6
College Graduate	60.3	87.7	43.5	71.8
Some Technical School	2.9	0.0	0.0	1.7
Technical School Graduate	0.0	0.0	0.0	0.6
Total Number	68	65	23	177

Test for independence between education level and ethnicity: P-value is 0.002.

2. Highest Level of Owner Education by Gender

All groups had similar distributions of levels of owner education. Minority females had the highest rate of owners with only high school educations. Majority females had the highest rate of owners with a college education. Owner education level and owner gender were independent factors. (Table 3.36).

Table 3.36. Highest Level of Owner Education by Gender

Educational Level	Owners (%)			
	Minority Males	Minority Females	Majority Males	Majority Females
Not a High School Graduate	3.9	0.00	2.2	2.6
High School Graduate Only	7.0	17.90	11.6	5.1
Some College Only	16.4	21.4	12.3	17.9
College Graduate	71.1	60.7	71.0	74.4
Some Technical School Only	1.6	0.0	2.2	0.0
Technical School Graduate	0.0	0.0	0.7	0.0
Total Number	128	28	138	39

Test of independence between education level and M/WBE: P-value is 0.758

D. Summary

The tests for independence performed for each question in the capacity survey show that some criteria for judging a business' capacity are highly dependent on the owner's race/ethnicity and/or gender. Some criteria, for example if a business works mostly as a prime, subcontractor, or both, has no relationship with the race or gender of the owner.

Business tier and the owner's race/ethnicity were found to be independent factors. The gender of the business owner was not related to the business tier of the company. Race/ethnicity and gender did not significantly effect whether a business worked as a prime or subcontractor.

Years in business and owner race/ethnicity were found to be extremely dependent factors, as were years in business and the owner's gender. Caucasian businesses were significantly older than minority-owned businesses.

Although the number of employees and the owner's race/ethnicity did have a relationship, the number of employees was more dependent on the business owner's gender. Majority male-owned companies employed mostly 21 or more employees, while the other groups employed usually 10 or fewer employees.

Gross receipts of a business were found to be extremely dependent on the race/ethnicity of the owner. The gender of the owner also had a highly dependent relationship with the gross receipts of the business.

Largest contract was not affected by the owner's race/ethnicity nor by the owner's gender. Finally, although owner education level and owner race/ethnicity were found to be dependent factors, the business owner's education level was independent from the owner's gender. Table 3.37 summarizes the finding of the tests for independence.

Table 3.37. Comparison between Selected Criteria of Capacity and Owner Race/Ethnicity and Gender

Capacity Criteria	Level of Dependency*	
	Owner Race/Ethnicity	Owner Gender
Business Tier	None	None
Number of Years in Business	High	High
Number of Employees	Moderate	High
Gross Receipts	High	High
Size of Contracts Received	None	None
Education Level of Owner	Moderate	None

* Dependency, based on the P-value, refers to how closely the two factors are related.

Of the six criteria used to judge the capacity of businesses by ethnicity, Caucasian businesses had the greatest capacity using three criteria: years in business, number of employees, and gross receipts. African Americans had the largest capacity using contract size as a criteria.

Asian Americans had the greatest capacity using one criteria, education level of owner, and Hispanic Americans had the greatest capacity using business tier as an indicator.

Of the six criteria used to judge businesses by the owner's gender, majority male-owned businesses had the greatest capacity using four criteria: business tier, years in business, number of employees, and gross receipts. Minority male-owned businesses had the greatest capacity in the largest contract category, and majority female-owned business had the greatest capacity in the remaining category, education level of owner.

The distribution of contracts by size let by the City of Oakland, in this chapter, Section X, demonstrates that 71 percent of all construction contracts were let at values under \$50,000, 87 percent of all architecture and engineering contracts were smaller than \$50,000, and 96 percent of purchasing contracts were under \$50,000. Thus, capacity to perform is not an issue on the vast majority of the City's contracts, which are small.

VII. AVAILABILITY

A. Construction Availability

There are an estimated 391 ready and willing construction companies in the City of Oakland market area. The distribution of those available businesses is in Table 3.38:

African Americans: The 160 firms account for 40.9 percent of the construction firms in the market area.

Asian Americans: The 43 construction firms account for 11.0 percent of the construction firms in the market area.

Hispanic Americans: The 33 firms, account for 8.4 percent of the construction firms in the market area.

Native Americans: The two firms, account for 0.5 percent of the construction firms in the market area.

Caucasian Females: The 27 construction firms account for 6.9 percent of the construction firms in the market area.

Caucasian Males: The 126 firms, account for 32.2 percent of the construction firms in the market area.

B. Architecture and Engineering Availability

There are an estimated 163 ready and willing architecture and engineering firms in the market area. The distribution of those available businesses is in Table 3.39:

African Americans: The 40 firms account for 24.5 percent of the architecture and engineering firms in the market area.

Asian Americans: The 48 firms account for 29.4 percent of the architecture and engineering firms in the market area.

Hispanic Americans: The nine firms, account for 5.5 percent of the architecture and engineering firms in the market area.

Native Americans: There are no architecture and engineering firms in the market area.

Caucasian Females: The 21 firms account for 12.8 percent of the architecture and engineering firms in the market area.

Caucasian Males: The 45 firms account for 27.6 percent of the architecture and engineering firms in the market area.

C. Purchasing Availability

There are an estimated 610 ready and willing vendors in the market area. The distribution of those available businesses is in Table 3.40:

African Americans: The 95 firms account for 15.5 percent of the vendors in the market area.

Asian Americans: The 75 firms account for 12.3 percent of the vendors in the market area.

Hispanic Americans: The 38 firms account for 6.2 percent of the vendors in the market area.

Native Americans: There were no vendors in the market area.

Caucasian Females: The 34 firms account for 5.5 percent of the vendors in the market area.

Table 3.38
Construction Availability

Ethnicity and Gender	Number of Businesses	Percent of Businesses
African American Females	14	3.58%
African American Males	146	37.34%
Asian American Females	0	0.00%
Asian American Males	43	11.00%
Hispanic American Females	3	0.77%
Hispanic American Males	30	7.67%
Native American Females	0	0.00%
Native American Males	2	0.51%
Caucasian Females	27	6.91%
Caucasian Males	126	32.23%
TOTAL	391	100.00%

Ethnicity	Number of Businesses	Percent of Businesses
African Americans	160	40.92%
Asian Americans	43	11.00%
Hispanic Americans	33	8.44%
Native Americans	2	0.51%
Caucasian Females	27	6.91%
Caucasian Males	126	32.23%
TOTAL	391	100.00%

Minority and Gender	Number of Businesses	Percent of Businesses
Minority Females	17	4.35%
Minority Males	221	56.52%
Caucasian Females	27	6.91%
Caucasian Males	126	32.23%
TOTAL	391	100.00%

Minority and Women	Number of Businesses	Percent of Businesses
MBEs	238	60.87%
WBEs	44	11.25%
M/WBEs	265	67.77%

Table 3.39
Architecture & Engineering Availability

Ethnicity and Gender	Number of Businesses	Percent of Businesses
African American Females	5	3.07%
African American Males	35	21.47%
Asian American Females	7	4.29%
Asian American Males	41	25.15%
Hispanic American Females	0	0.00%
Hispanic American Males	9	5.52%
Native American Females	0	0.00%
Native American Males	0	0.00%
Caucasian Females	21	12.88%
Caucasian Males	45	27.61%
TOTAL	163	100.00%

Ethnicity	Number of Businesses	Percent of Businesses
African Americans	40	24.54%
Asian Americans	48	29.45%
Hispanic Americans	9	5.52%
Native Americans	0	0.00%
Caucasian Females	21	12.88%
Caucasian Males	45	27.61%
TOTAL	163	100.00%

Minority and Gender	Number of Businesses	Percent of Businesses
Minority Females	12	7.36%
Minority Males	85	52.15%
Caucasian Females	21	12.88%
Caucasian Males	45	27.61%
TOTAL	163	100.00%

Minority and Women	Number of Businesses	Percent of Businesses
MBEs	97	59.51%
WBEs	33	20.25%
M/WBEs	118	72.39%

Table 3.40
Purchasing Availability

Ethnicity and Gender	Number of Businesses	Percent of Businesses
African American Females	30	4.92%
African American Males	65	10.66%
Asian American Females	11	1.80%
Asian American Males	64	10.49%
Hispanic American Females	9	1.48%
Hispanic American Males	29	4.75%
Native American Females	0	0.00%
Native American Males	0	0.00%
Caucasian Females	34	5.57%
Caucasian Males	368	60.33%
TOTAL	610	100.00%

Ethnicity	Number of Businesses	Percent of Businesses
African Americans	95	15.57%
Asian Americans	75	12.30%
Hispanic Americans	38	6.23%
Native Americans	0	0.00%
Caucasian Females	34	5.57%
Caucasian Males	368	60.33%
TOTAL	610	100.00%

Minority and Gender	Number of Businesses	Percent of Businesses
Minority Females	50	8.20%
Minority Males	158	25.90%
Caucasian Females	34	5.57%
Caucasian Males	368	60.33%
TOTAL	610	100.00%

Minority and Women	Number of Businesses	Percent of Businesses
MBEs	208	34.10%
WBEs	84	13.77%
M/WBEs	242	39.67%

Caucasian Males: The 368 firms account for 60.3 percent of the vendors in the market area.

VIII. STATISTICAL MODEL

As discussed above in the Legal Framework section of this Report, *Croson* holds that “[w]here there is a significant statistical disparity between the number of qualified minority contractors willing and able to perform a particular service and the number of such contractors actually engaged by the locality or the locality’s prime contractors, an inference of discriminatory exclusion could arise.”⁹

The Supreme Court first articulated and refined this concept — that statistics can be used to create an inference of discrimination — in a handful of employment discrimination cases.¹⁰ It was in one of these employment discrimination cases, *Teamsters v. United States*, that the Court observed that statistical data creating an “inference” of discrimination can be supported by individual, personal accounts of discrimination, accounts which can “br[ing] the cold numbers convincingly to life.”¹¹ Given the limitations of the statistical test, anecdotal data has an especially important role in explaining the conditions of discrimination that might exist in the market area.

Under a fair and equitable system of awarding contracts, the proportion of contract dollars awarded to M/WBEs would be equal to the proportion of M/WBEs in the relevant market area. If these proportions are not equal, or if a disparity exists between these proportions, the likelihood or probability that the disparity is due to chance could be determined using a statistical test. If there is a very low probability that the disparity is due to chance,¹² the Court states that an inference of discrimination can be made.

In analyzing the data of actual contract dollars received by a given ethnic/gender group and the expected contract dollars that given ethnic/gender group should receive, any difference between the actual and expected dollars can be interpreted to be due either to chance or to discriminatory or [biased] practices in the contract award process.

The first step in conducting a statistical test is to calculate the contract value that each ethnic/gender is expected to receive based on each group’s respective availability in the market area. This value shall be referred to as the **expected contract amount**. The next step

⁹ *Croson*, 488 U.S. at 509.

¹⁰ See *Croson*, 488 U.S. at 501-02, 509 (citing Int’l Broth. of Teamsters v. U.S., 431 U.S. 324 (1977), *Hazelwood School Dist. v. U.S.*, 433 U.S. 299 (1977), *Bazemore v. Friday*, 478 U.S. 385 (1986), and *Johnson v. Transportation Agency*, 480 U.S. 616 (1987)).

¹¹ *Id.*

¹² When conducting statistical tests, a confidence level must be established as a gauge for the level of certainty that an observed occurrence is not due to chance. It is important to note that a 100 percent confidence level or a level of absolute certainty can never be obtained in statistics. A 95 percent confidence level is considered by the Courts to be an acceptable level in determining whether an inference of discrimination can be made. Thus, the data analyzed here was done within the 95 percent confidence level.

is to compute the difference between the **expected contract amount** of a given ethnic/gender group and the **actual contract amount** received by that group. In order to assess whether this difference is attributable to chance, a Z statistic is calculated. The Z statistic standardizes the difference between the actual contract amount and the expected contract amount by indicating how much the actual contract amount received will deviate from the expected contract amount. Therefore, the Z statistic is defined as the number of standard deviations the actual contract amount is away from the expected contract amount. The larger the Z statistic, or the larger the number of standard deviations (SDs) away from the expected amount, the lower the probability that the difference or disparity could have occurred by chance.

The standard cut off point is 1.64 SDs away from the expected amount for determining whether the disparity or difference is due to chance. If the number of SDs away or the Z statistic exceeds 1.64, then an inference of discrimination or bias can be made which would mean that the data is statistically significant.

It is important to note that there are two critical constraints in performing statistical tests for significance. First, the size of population affects the reliability of the results. In other words, a relatively small population size, whether it be in terms of the total number of contracts or the total number of available businesses, decreases the reliability of the statistical results which precludes one from drawing any meaningful conclusions from the results. Second, although an inference of discrimination cannot be made if statistical significance is not obtained from the test, one cannot infer from the results that there was no discrimination. Therefore, in light of these two constraints, the results of the statistical disparity analysis are necessarily influenced by the size of the population in each contracting and ethnicity/gender category and where the results are not statistically significant, the existence of discrimination can not be ruled out. Given the limitations of the statistical test, the anecdotal data has an especially important role in explaining the conditions of discrimination that might exist in the market area.

IX. DISPARITY ANALYSIS

Two types of statistical disparity analyses were conducted. The **first** examined the **number of contracts** awarded by ethnicity and gender. The **second** examined the amount of **contract dollars** awarded by ethnicity and gender. The following details the results of the statistical disparity analysis.

A. Summary of Disparity Analysis – Construction Contracts for 1991-94

As indicated in Table 3.41 and Chart 3.1, African Americans and Asian Americans received fewer contracts than expected given their availability. Hispanic Americans, Native Americans, Caucasian females and Caucasian males received more contracts than expected. This disparity was statistically significant for all groups except Asian Americans.

African Americans: Whereas African Americans represent 40.9 percent of available construction firms, they received 24.9 percent of the construction contracts.

Asian Americans: Whereas Asian Americans represent 11.0 percent of the construction firms, they received 10.1 percent of the construction contracts.

Hispanic Americans: Whereas Hispanic Americans represent 8.4 percent of the available construction firms, they received 14.6 percent of the construction contracts.

Native Americans: Whereas Native Americans represent 0.5 percent of the available construction firms, they received one percent of the construction contracts.

Caucasian Females: Whereas Caucasian females represent 6.9 percent of the construction firms, they received 12.4 percent of the construction contracts.

Caucasian Males: Whereas Caucasian males represent 32.2 percent of the construction firms, they received 36.8 percent of the construction contracts.

B. Construction Contracts Lost to Minority Businesses

The Expected Number (Column 5) in Table 3.41 represents the number of contracts M/WBEs and Caucasian males should have received given the availability of each. Conversely, lost revenue is shown in Column 7 by the difference between the expected and actual number of contract awards.

Minority and women business owners lost about 190 construction contracts during the 1991-94 study period. For African Americans, the number of contracts lost was 181 contracts. Asian Americans lost nine contracts. Native Americans received six more than would be expected. Hispanic Americans received 70 more contracts than would be expected and Caucasian females received 62 more contracts than expected. Caucasian males received 52 more contracts than would be expected.

Table 3.41
Disparity Analysis - Number of Construction Contracts
Fiscal Years 1991 - 94

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Ethnicity	Actual Number	Utilization%	Availability%	Expected Number	Z	Net Number	Net %
African Americans	283	24.93%	40.92%	464.45	* -10.95	-181.45	-39.07%
Asian Americans	115	10.13%	11.00%	124.82	-0.93	-9.82	-7.87%
Hispanic Americans	166	14.63%	8.44%	95.79	* 7.50	70.21	73.29%
Native Americans	12	1.06%	0.51%	5.81	* 2.58	6.19	106.70%
Caucasian Females	141	12.42%	6.91%	78.38	* 7.33	62.62	79.90%
Caucasian Males	418	36.83%	32.23%	365.75	* 3.32	52.25	14.28%
TOTAL	1,135	100.00%	100.00%	1,135.00			

Ethnicity and Gender	Actual Number	Utilization%	Availability%	Expected Number	Z	Net Number	Net %
African American Females	63	5.55%	3.58%	40.64	* 3.57	22.36	55.02%
African American Males	220	19.38%	37.34%	423.81	* -12.51	-203.81	-48.09%
Asian American Females	9	0.79%	0.00%	0.00	- -	9.00	-----
Asian American Males	106	9.34%	11.00%	124.82	* -1.79	-18.82	-15.08%
Hispanic American Females	15	1.32%	0.77%	8.71	* 2.14	6.29	72.25%
Hispanic American Males	151	13.30%	7.67%	87.08	* 7.13	63.92	73.40%
Native American Females	3	0.26%	0.00%	0.00	- -	3.00	-----
Native American Males	9	0.79%	0.51%	5.81	1.33	3.19	55.02%
Caucasian Females	141	12.42%	6.91%	78.38	* 7.33	62.62	79.90%
Caucasian Males	418	36.83%	32.23%	365.75	* 3.32	52.25	14.28%
TOTAL	1,135	100.00%	100.00%	1,135.00			

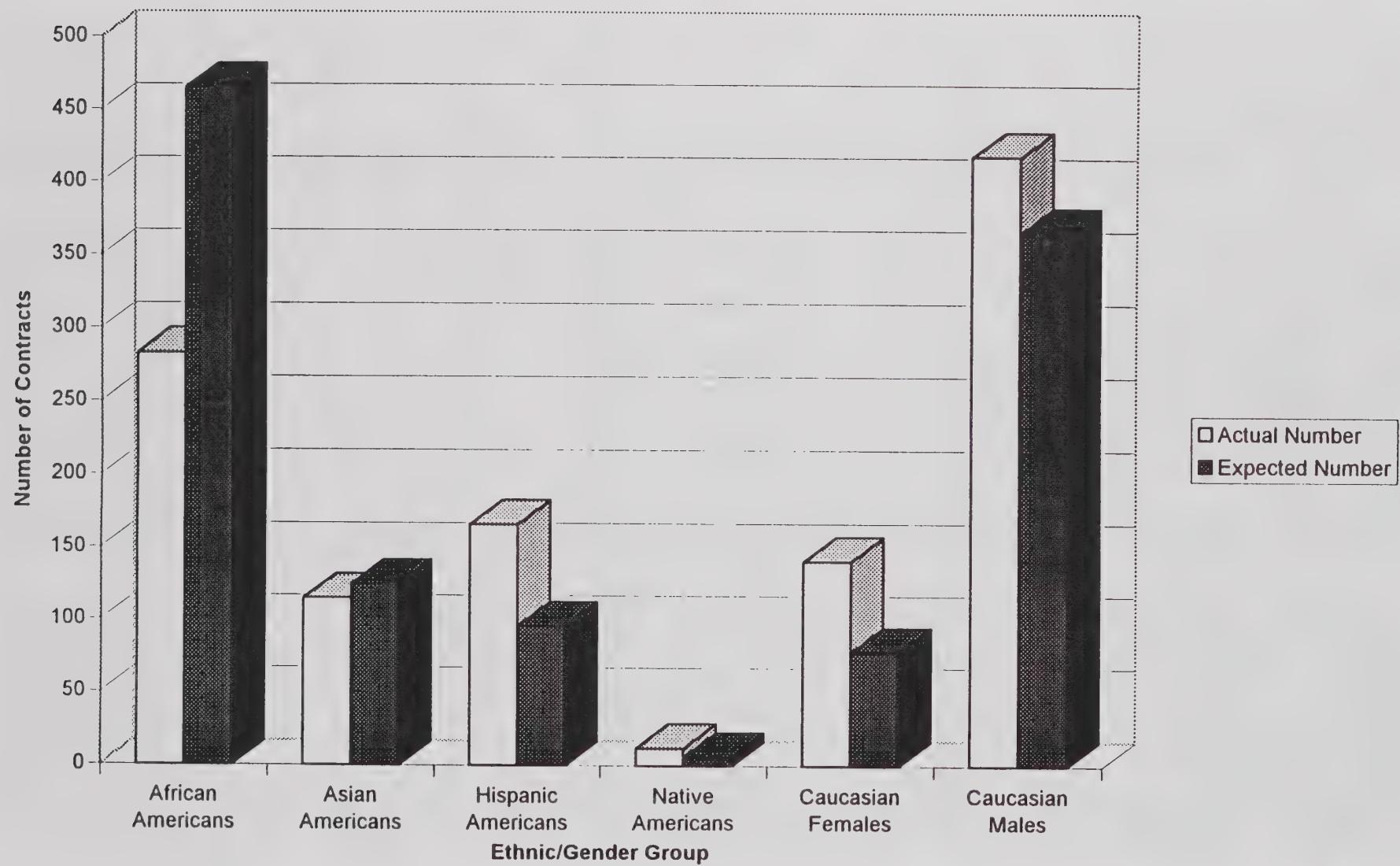
Minority and Gender	Actual Number	Utilization%	Availability%	Expected Number	Z	Net Number	Net %
Minority Females	90	7.93%	4.35%	49.35	* 5.92	40.65	82.38%
Minority Males	486	42.82%	56.52%	641.52	* -9.31	-155.52	-24.24%
Caucasian Females	141	12.42%	6.91%	78.38	* 7.33	62.62	79.90%
Caucasian Males	418	36.83%	32.23%	365.75	* 3.32	52.25	14.28%
TOTAL	1,135	100.00%	100.00%	1,135.00			

Minority and Women	Actual Number	Utilization%	Availability%	Expected Number	Z	Net Number	Net %
MBEs	576	50.75%	60.87%	690.87	* -6.99	-114.87	-16.63%
WBEs	231	20.35%	11.25%	127.72	* 9.70	103.28	80.86%
M/WBEs	717	63.17%	67.77%	769.25	* -3.32	-52.25	-6.79%

An asterisk (*) denotes statistical significance at the .05 level.

Chart 3.1

Disparity Analysis - Number of Construction Contracts



C. Summary of Disparity Analysis – Architecture and Engineering Contracts for 1991-94

The number of architecture and engineering contracts issued during the study period appears in Table 3.42 and Chart 3.2. All minority groups received fewer contracts than expected. The disparity in number of A&E contracts received is statistically significant for African Americans, Asian Americans and Caucasian males:

African Americans: Whereas African Americans represent 24.5 percent of available architecture and engineering firms, they received 17.0 percent of the architecture and engineering contracts.

Asian Americans: Whereas Asian Americans represent 29.4 percent of available architecture and engineering firms, they received 13.7 percent of the architecture and engineering contracts.

Hispanic Americans: Whereas Hispanic Americans represent 5.5 percent of the available architecture and engineering firms, they received 3.6 percent of the architecture and engineering contracts.

Native Americans: Native Americans represent an insignificant percentage of the available architecture and engineering firms, and received none of the architecture and engineering contracts.

Caucasian Females: Whereas Caucasian females represent 12.8 percent of available architecture and engineering firms, they received 16.1 percent of the architecture and engineering contracts.

Caucasian Males: Whereas Caucasian males represent 27.6 percent of available architecture and engineering firms, they received 49.3 percent of the architecture and engineering contracts.

D. Architecture and Engineering Contracts Lost to Minority Businesses

Column 7 in Table 3.42 depicts the number of architecture and engineering contracts lost to businesses. Asian Americans should have received an additional 38 architecture and engineering contracts, based on their availability to perform architecture and engineering work for the City. Caucasian males received 53 more A&E contracts than their numbers suggest they should have received. African American firms lost 18 contracts, Hispanic American firms lost four. Caucasian females received eight contracts more than would be expected.

Table 3.43
Disparity Analysis - Number of Purchasing Contracts
Fiscal Years 1991 - 94

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Ethnicity	Actual Number	Utilization%	Availability%	Expected Number	Z	Net Number	Net %
African American	897	17.12%	15.57%	815.91	*	3.09	81.09 9.94%
Asian American	461	8.80%	12.30%	644.14	*	-7.71	-183.14 -28.43%
Hispanic American	79	1.51%	6.23%	326.36	*	-14.14	-247.36 -75.79%
Native American	3	0.06%	0.00%	0.00	-	---	3.00 -----
Caucasian Female	342	6.53%	5.57%	292.01	*	3.01	49.99 17.12%
Caucasian Male	3,457	65.99%	60.33%	3,160.58	*	8.37	296.42 9.38%
TOTAL	5,239	100.00%	100.00%	5,239.00			

Ethnicity and Gender	Actual Number	Utilization%	Availability%	Expected Number	Z	Net Number	Net %
African American Female	437	8.34%	4.92%	257.66	*	11.46	179.34 69.61%
African American Male	460	8.78%	10.66%	558.25	*	-4.40	-98.25 -17.60%
Asian American Female	228	4.35%	1.80%	94.47	*	13.86	133.53 141.34%
Asian American Male	233	4.45%	10.49%	549.67	*	-14.28	-316.67 -57.61%
Hispanic Female	5	0.10%	1.48%	77.30	*	-8.28	-72.30 -93.53%
Hispanic Male	74	1.41%	4.75%	249.07	*	-11.37	-175.07 -70.29%
Native American Female	0	0.00%	0.00%	0.00	-	---	0.00 -----
Native American Male	3	0.06%	0.00%	0.00	-	---	3.00 -----
Caucasian Female	342	6.53%	5.57%	292.01	*	3.01	49.99 17.12%
Caucasian Male	3,457	65.99%	60.33%	3,160.58	*	8.37	296.42 9.38%
TOTAL	5,239	100.00%	100.00%	5,239.00			

Minority and Gender	Actual Number	Utilization%	Availability%	Expected Number	Z	Net Number	Net %
Minority Female	670	12.79%	8.20%	429.43	*	12.12	240.57 56.02%
Minority Male	770	14.70%	25.90%	1,356.99	*	-18.51	-586.99 -43.26%
Caucasian Female	342	6.53%	5.57%	292.01	*	3.01	49.99 17.12%
Caucasian Male	3,457	65.99%	60.33%	3,160.58	*	8.37	296.42 9.38%
TOTAL	5,239	100.00%	100.00%	5,239.00			

Minority and Woman	Actual Number	Utilization%	Availability%	Expected Number	Z	Net Number	Net %
MBE	1,440	27.49%	34.10%	1,786.41	*	-10.10	-346.41 -19.39%
WBE	1,012	19.32%	13.77%	721.44	*	11.65	290.56 40.28%
M/WBE	1,782	34.01%	39.67%	2,078.42	*	-8.37	-296.42 -14.26%

An asterisk (*) denotes statistical significance at the .05 level.

Chart 3.3

Disparity Analysis - Number of Purchasing Contracts

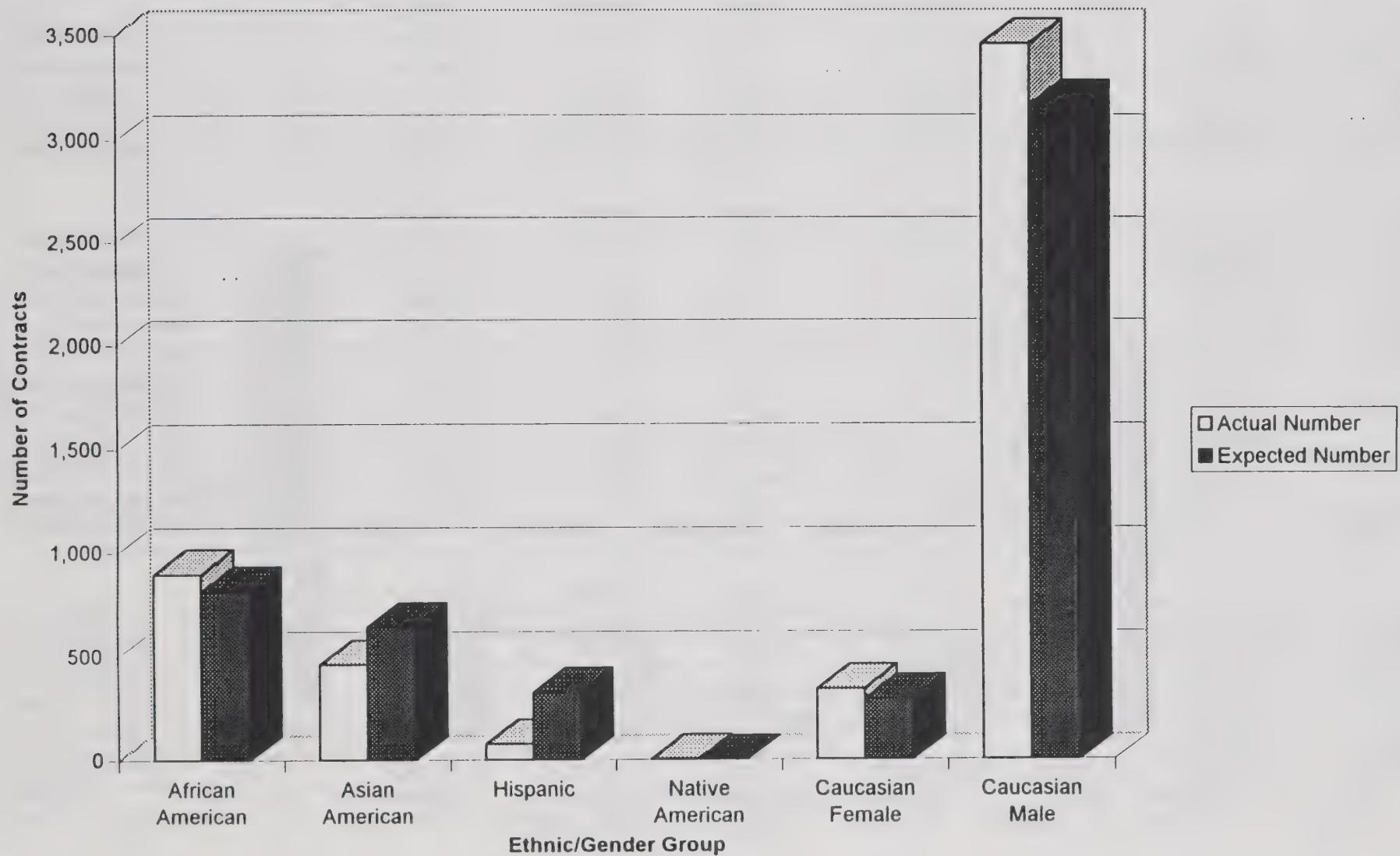


Table 3.44
Disparity Analysis - Construction Dollars
Fiscal Years 1991 - 94

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Ethnicity	Actual Dollars	Utilization%	Availability%	Expected Number	Z	Net Dollars	Net %
African Americans	\$20,493,173	21.10%	40.92%	\$39,736,027	*	-9.78	(\$19,242,854) -48.43%
Asian Americans	\$7,740,052	7.97%	11.00%	\$10,679,057	0.08	(\$2,939,005)	-27.52%
Hispanic Americans	\$8,175,092	8.42%	8.44%	\$8,195,556	*	5.97	(\$20,464) -0.25%
Native Americans	\$2,617,224	2.70%	0.51%	\$496,700	1.25	\$2,120,524	426.92%
Caucasian Females	\$4,198,193	4.32%	6.91%	\$6,705,455	*	4.62	(\$2,507,262) -37.39%
Caucasian Males	\$53,881,183	55.49%	32.23%	\$31,292,121	*	3.99	\$22,589,061 72.19%
TOTAL	\$97,104,917	100.00%	100.00%	\$97,104,917			

Ethnicity and Gender	Actual Dollars	Utilization%	Availability%	Expected Dollars	Z	Net Dollars	Net %
African American Females	\$2,773,720	2.86	3.58%	\$3,476,902	*	2.65	(\$703,182) -20.22%
African American Males	\$17,719,453	18.25%	37.34%	\$36,259,125	*	-10.96	(\$18,539,672) -51.13%
Asian American Females	\$81,519	0.08%	0.00%	\$0	-	—	\$81,519 —
Asian American Males	\$7,658,533	7.89%	11.00%	\$10,679,057	-0.39	(\$3,020,524)	-28.28%
Hispanic American Females	\$197,418	0.20%	0.77%	\$745,051	0.79	(\$547,633)	-73.50%
Hispanic American Males	\$7,977,674	8.22%	7.67%	\$7,450,505	*	5.97	\$527,169 7.08%
Native American Females	\$804,302	0.83%	0.00%	\$0	-	—	\$804,302 —
Native American Males	\$1,812,922	1.87%	0.51%	\$496,700	-0.13	\$1,316,222	264.99%
Caucasian Females	\$4,198,193	4.32%	6.91%	\$6,705,455	*	4.62	(\$2,507,262) -37.39%
Caucasian Males	\$53,881,183	55.49%	32.23%	\$31,292,121	*	3.99	\$22,589,061 72.19%
TOTAL	\$97,104,917	100.00%	100.00%	\$97,104,917			

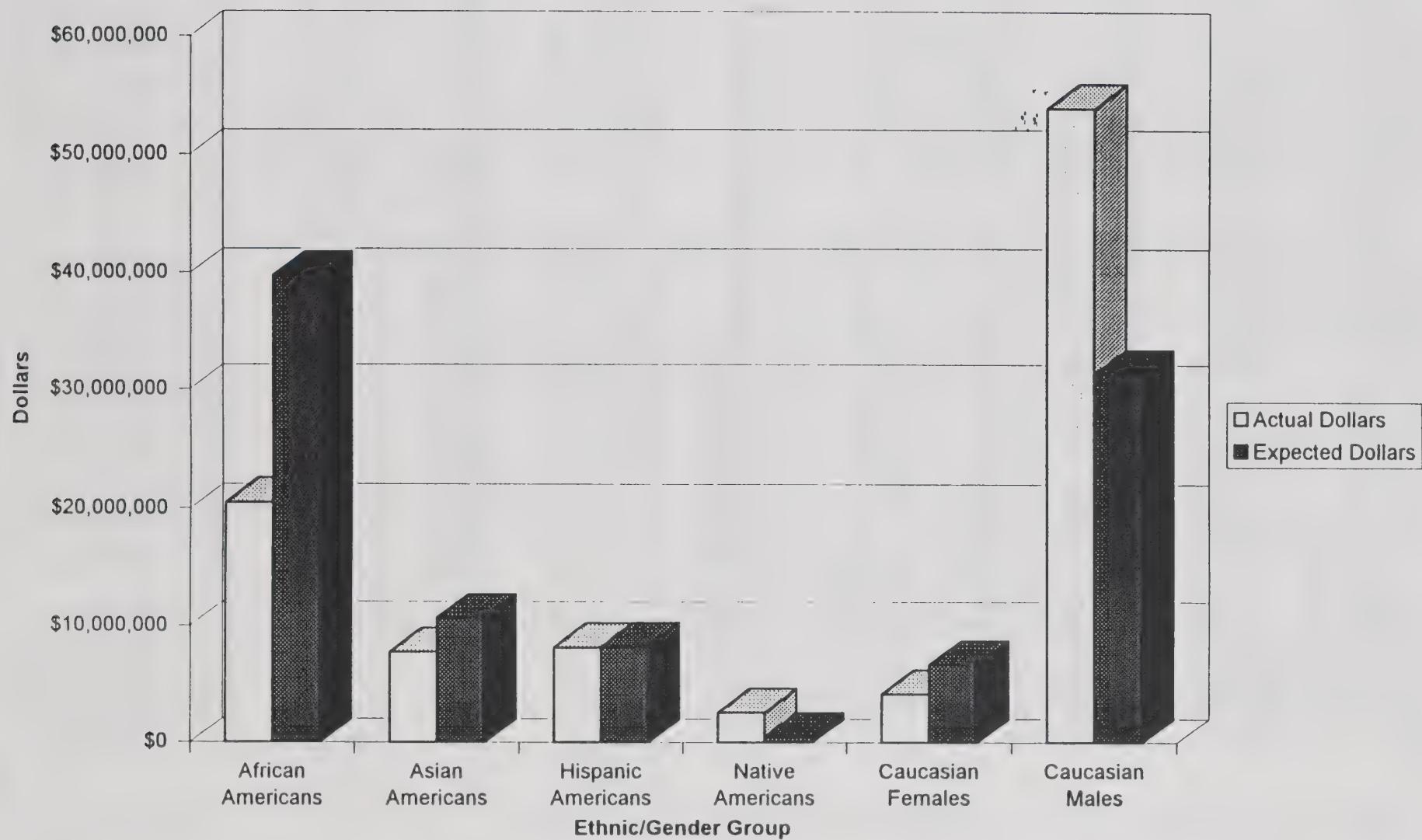
Minority and Gender	Actual Dollars	Utilization%	Availability%	Expected Dollars	Z	Net Dollars	Net %
Minority Females	\$3,856,959	3.97%	4.35%	\$4,221,953	*	3.96	(\$364,994) -8.65%
Minority Males	\$35,168,582	36.22%	56.52%	\$54,885,388	*	-7.75	(\$9,716,806) -35.92%
Caucasian Females	\$4,198,193	4.32%	6.91%	\$6,705,455	*	4.62	(\$2,507,262) -37.39%
Caucasian Males	\$53,881,183	55.49%	32.23%	\$31,292,121	*	3.99	\$22,589,061 72.19%
TOTAL	\$97,104,917	100.00%	100.00%	\$97,104,917			

Minority and Women	Actual Dollars	Utilization%	Availability%	Expected Dollars	Z	Net Dollars	Net %
MBEs	\$39,025,541	40.19%	60.87%	\$59,107,340	*	-6.22	(\$20,081,800) -33.98%
WBEs	\$8,055,152	8.30%	11.25%	\$10,927,407	*	6.26	(\$2,872,255) -26.28%
M/WBEs	\$43,223,734	44.51%	67.77%	\$65,812,795	*	-3.99	(\$22,589,061) -34.32%

An asterisk (*) denotes statistical significance at the .05 level.

Chart 3.4

Disparity Analysis - Construction Dollars



Asian Americans: Whereas Asian Americans represent 29.4 percent of the available architecture and engineering firms, they received 10.8 percent of the architecture and engineering dollars.

Hispanic Americans: Whereas Hispanic Americans represent 5.5 percent of the available architecture and engineering firms, they received 1.3 percent of the architecture and engineering dollars.

Native Americans: Native Americans represented an insignificant percentage of the architecture and engineering firms and received none of the architecture and engineering dollars.

Caucasian Females: Whereas Caucasian females represent 12.8 percent of the available architecture and engineering firms, they received 7.4 percent of the design consultant dollars.

Caucasian Males: Whereas Caucasian males represent 27.6 percent of the available architecture and engineering firms, they received 67.8 percent of the architecture and engineering dollars.

J. Architecture and Engineering Dollars Lost to Minority Businesses

Minority- and woman-owned companies lost over \$4 million in architecture and engineering dollars over the study period. As depicted in Column 7 of Table 3.45, African Americans lost over \$1.2 million; Asian Americans lost close to \$1.9 million; Caucasian females lost over \$500 thousand; and, Hispanic business owners lost over \$400 thousand.

K. Summary of Disparity Analysis – Purchasing Contract Dollars for 1991-94

The numbers of purchasing contract dollars are depicted in Table 3.46 and Chart 3.6. More than 85 percent of purchasing contract dollars went to Caucasian male-owned businesses. Disparity was significant for African Americans, Asian Americans, Hispanic Americans and Caucasian males:

African Americans: Whereas African Americans represent 15.5 percent of available vendors, they received 4.1 percent of the purchasing contract dollars.

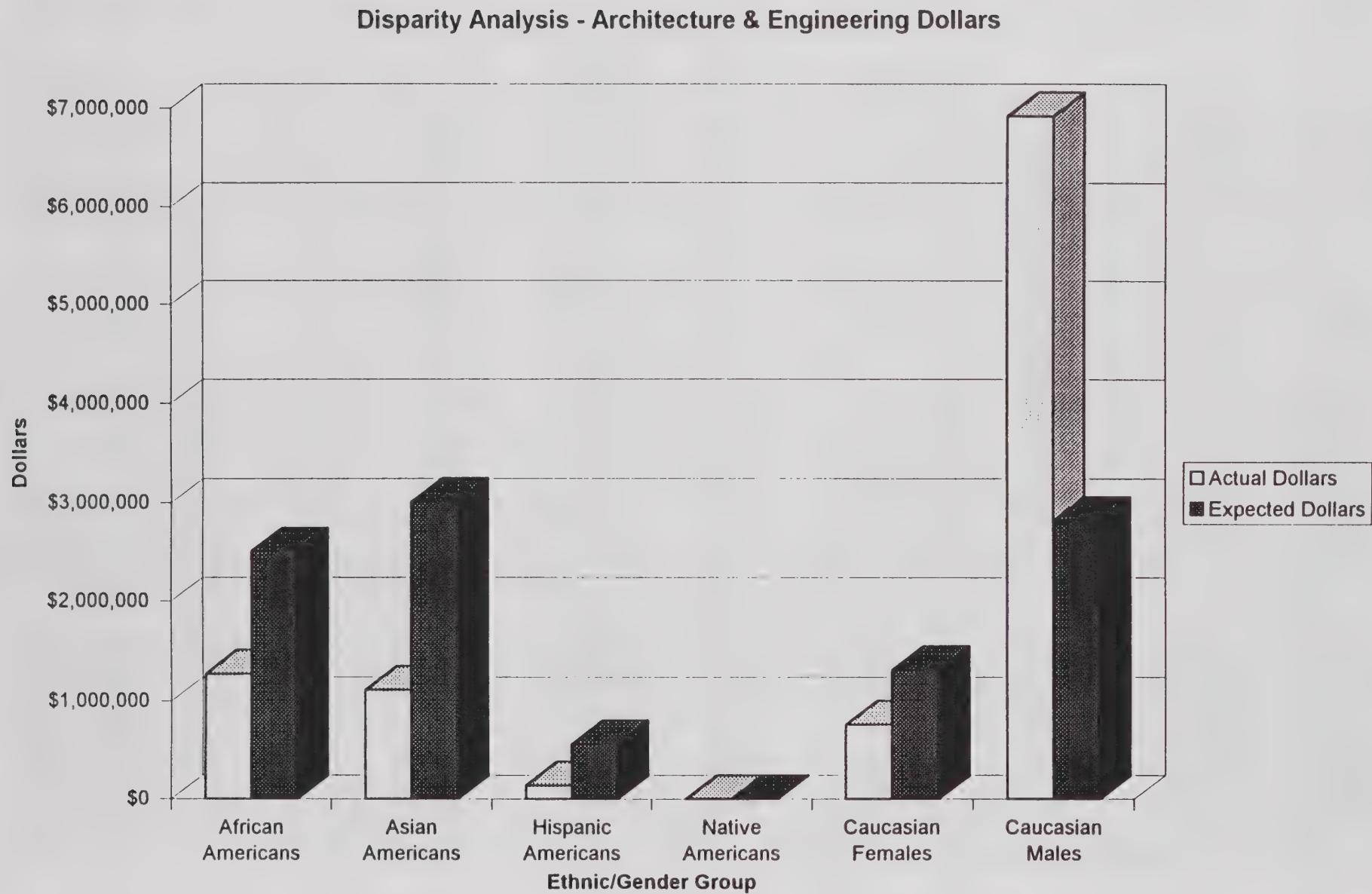
Asian Americans: Asian Americans represent 12.3 percent of the available vendors, they received 3.5 percent of the purchasing contract dollars.

Table 3.45
Disparity Analysis - Architecture & Engineering Dollars
Fiscal Years 1991 - 94

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Ethnicity	Actual Dollars	Utilization%	Availability%	Expected Number	Z	Net Dollars	Net %
African Americans	\$1,272,346	12.47%	24.54%	\$2,504,019	*	-2.22	(\$1,231,673) -49.19%
Asian Americans	\$1,110,361	10.88%	29.45%	\$3,004,823	*	-5.12	(\$1,894,462) -63.05%
Hispanic Americans	\$139,232	1.36%	5.52%	\$563,404	*	-0.85	(\$424,172) -75.29%
Native Americans	\$0	0.00%	0.00%	\$0	-	—	\$0 —
Caucasian Females	\$760,987	7.46%	12.88%	\$1,314,610	0.73	(\$553,623) -42.11%	
Caucasian Males	\$6,920,952	67.83%	27.61%	\$2,817,022	*	7.24	\$4,103,930 145.68%
TOTAL	\$10,203,878	100.00%	100.00%	\$10,203,878			
Ethnicity and Gender	Actual Dollars	Utilization%	Availability%	Expected Dollars	Z	Net Dollars	Net %
African American Females	\$42,998	0.42	3.07%	\$13,002	-1.25	(\$270,004) -86.26%	
African American Males	\$1,229,348	12.05%	21.47%	\$2,191,017	*	-1.80	(\$961,669) -43.89%
Asian American Females	\$612,008	6.00%	4.29%	\$438,203	-0.18	\$173,805 39.66%	
Asian American Males	\$498,353	4.88%	25.15%	\$2,566,620	*	-5.30	(\$2,068,267) -80.58%
Hispanic American Females	\$0	0.00%	0.00%	\$0	-	—	\$0 —
Hispanic American Males	\$139,232	1.36%	5.52%	\$563,404	-0.85	\$424,172	-75.29%
Native American Females	\$0	0.00%	0.00%	\$0	--	—	\$0 —
Native American Males	\$0	0.00%	0.00%	\$0	--	—	\$0 —
Caucasian Females	\$760,987	7.46%	12.88%	\$1,314,610	0.73	(\$553,623) -42.11%	
Caucasian Males	\$6,920,952	67.83%	27.61%	\$2,817,022	*	7.24	\$4,103,930 145.68%
TOTAL	\$10,203,878	100.00%	100.00%	\$10,203,878			
Minority and Gender	Actual Dollars	Utilization%	Availability%	Expected Dollars	Z	Net Dollars	Net %
Minority Females	\$655,006	6.42%	7.36%	\$751,206	-0.97	(\$96,200) -12.81%	
Minority Males	\$1,866,933	18.30%	52.15%	\$5,321,041	*	-6.47	(\$3,454,108) -64.91%
Caucasian Females	\$760,987	7.46%	12.88%	\$1,314,610	0.73	(\$553,623) -42.11%	
Caucasian Males	\$6,920,952	67.83%	27.61%	\$2,817,022	*	7.24	\$4,103,930 145.68%
TOTAL	\$10,203,878	100.00%	100.00%	\$10,203,878			
Minority and Women	Actual Dollars	Utilization%	Availability%	Expected Dollars	Z	Net Dollars	Net %
MBEs	\$2,521,39	24.72%	59.51%	\$6,072,246	*	-7.10	(\$3,550,307) -58.47%
WBEs	\$1,415,993	13.88%	20.25%	\$2,065,816	-0.02	(\$649,823) -31.46%	
M/WBEs	\$3,282,926	32.17%	72.39%	\$7,386,856	*	-7.24	(\$4,103,930) -55.56%

An asterisk (*) denotes statistical significance at the .05 level.

Chart 3.5



Hispanic Americans: Whereas Hispanic Americans represent 6.2 percent of the available vendors, they received 1.4 percent of the purchasing contract dollars.

Native Americans: Native Americans represent an insignificant percentage of the available vendors and received an insignificant percentage of purchasing contract dollars.

Caucasian Females: Whereas Caucasian females represent 5.5 percent of the available vendors, they received five percent of the purchasing contract dollars.

Caucasian Males: Whereas Caucasian males represent 60.3 percent of the available vendors, they received 85.7 percent of the purchasing contract dollars.

L. Purchasing Contract Dollars Lost to Minority Businesses

Some M/WBEs lost dollars in purchasing contracts during the study period. As depicted in Column 7 of Table 3.46, African Americans lost over \$6.5 million and Asian American firms lost over \$5 million. Hispanic Americans lost a significant \$2.7 million and Caucasian females lost over \$300 thousand in purchasing contracts. Caucasian males gained \$14.6 million more than would be expected.

X. ANALYSIS OF FIRM CAPACITY

Croson suggests that an MBE (and implicitly a WBE) has the capacity to perform if it is to be included in the number of available M/WBEs.¹³ A reasonable definition of capacity is the capability to perform the contracts awarded by the entity. Measuring capacity can involve an assessment of willing businesses capability to perform, as measured by the businesses commercial characteristics. Such characteristics that would define a businesses capability to perform could be revenue, number of employees, insurance/bonding levels, line of credit and credit rating. An assessment using this standard is difficult because it requires the

¹³ See *Croson*, 109 S. Ct. 706, 729 (1989)

Table 3.46
Disparity Analysis - Purchasing Dollars
Fiscal Years 1991 - 94

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Ethnicity	Actual Dollars	Utilization%	Availability%	Expected Number	Z	Net Dollars	Net %
African Americans	\$2,407,715	4.19%	15.57%	\$8,947,101	*	-5.35	(\$6,539,386)
Asian Americans	\$2,027,275	3.53%	12.30%	\$7,063,501	*	-7.53	(\$5,036,226)
Hispanic Americans	\$846,171	1.47%	6.23%	\$3,578,841	*	-11.83	(\$2,732,669)
Native Americans	\$742	0.00%	0.00%	\$0	--	—	\$742
Caucasian Females	\$2,884,701	5.02%	5.57%	\$3,202,121	*	3.08	(\$317,420)
Caucasian Males	\$49,283.205	85.78%	60.33%	\$34,658,245	*	13.41	\$14,624,959
TOTAL	\$57,449,809	100.00%	100.00%	\$57,449,809			

Ethnicity and Gender	Actual Dollars	Utilization%	Availability%	Expected Dollars	Z	Net Dollars	Net %
African American Females	\$842,187	1.47%	4.92%	\$2,825,400	0.81	(\$1,983,214)	-70.19%
African American Males	\$1,565,528	2.73%	10.66%	\$6,121,701	*	-6.85	(\$4,556,173)
Asian American Females	\$1,022,525	1.78%	1.80%	\$1,035,980	*	10.62	(\$13,455)
Asian American Males	\$1,004,749	1.75%	10.49%	\$6,027,521	*	-12.69	(\$5,022,772)
Hispanic American Females	\$16,000	0.03%	1.48%	\$847,620	*	-7.14	(\$831,620)
Hispanic American Males	\$830,171	1.45%	4.75%	\$2,731,220	*	-9.40	(\$1,901,049)
Native American Females	\$0	0.00%	0.00%	\$0	--	—	\$0
Native American Males	\$742	0.00%	0.00%	\$0	--	—	\$742
Caucasian Females	\$2,884,701	5.02%	5.57%	\$3,202,121	*	3.08	(\$317,420)
Caucasian Males	\$49,283.205	85.78%	60.33%	\$34,658,245	*	13.41	\$14,624,959
TOTAL	\$57,449,809	100.00%	100.00%	\$57,449,809			

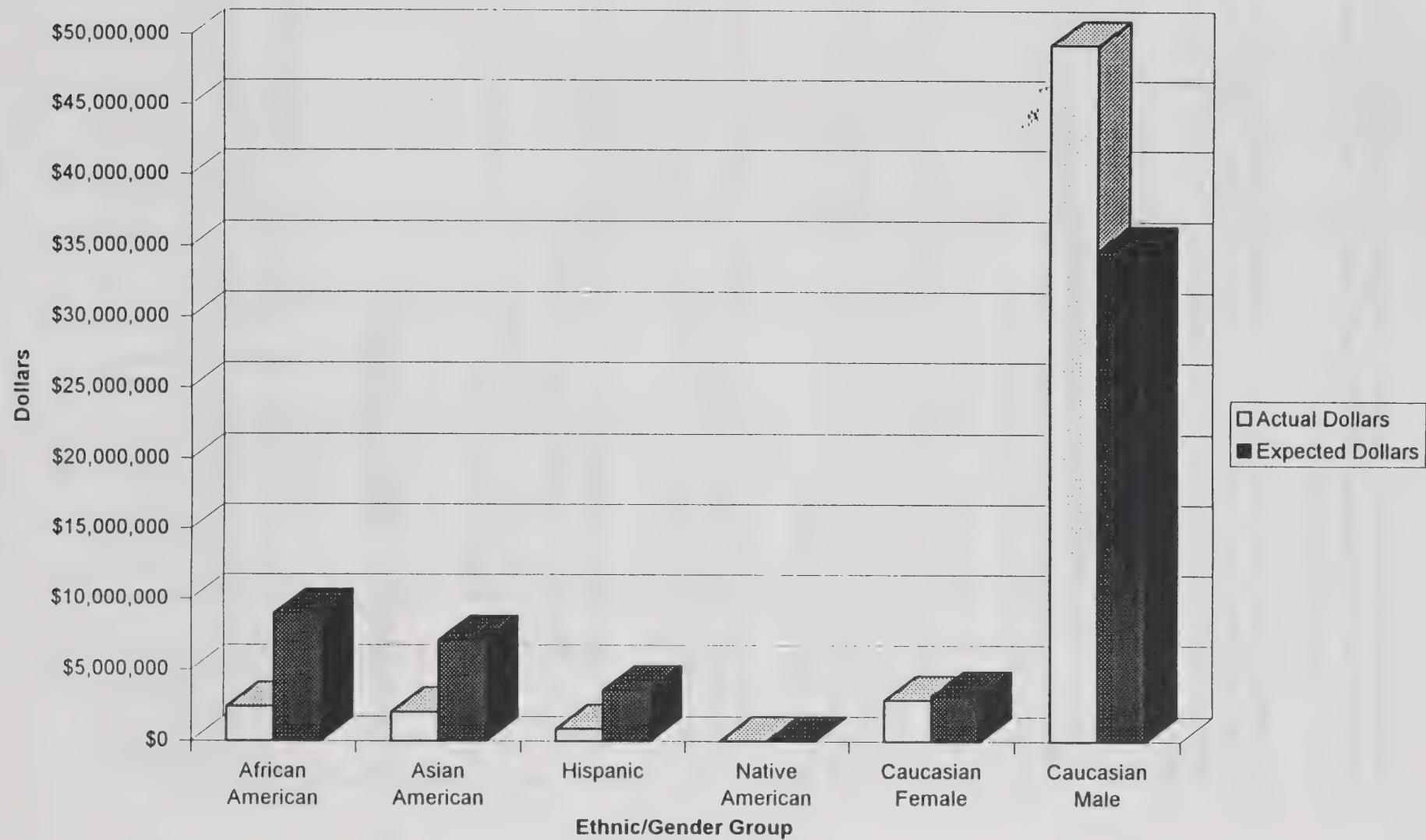
Minority and Gender	Actual Dollars	Utilization%	Availability%	Expected Dollars	Z	Net Dollars	Net %
Minority Females	\$1,880,712	3.27%	8.20%	\$4,709,001	*	2.66	(\$2,828,289)
Minority Males	\$3,401,191	5.92%	25.90%	\$14,880,442	*	-18.25	(\$11,479,251)
Caucasian Females	\$2,884,701	5.02%	5.57%	\$3,202,121	*	3.08	(\$317,420)
Caucasian Males	\$49,283.205	85.78%	60.33%	\$34,658,245	*	13.41	\$14,624,959
TOTAL	\$57,449,809	100.00%	100.00%	\$57,449,800			

Minority and Women	Actual Dollars	Utilization%	Availability%	Expected Dollars	Z	Net Dollars	Net %
MBEs	\$5,281,903	9.19%	34.10%	\$19,589,443	*	-15.33	(\$14,307,540)
WBEs	\$4,765,413	8.29%	13.77%	\$7,911,121	*	4.16	(\$3,145,708)
M/WBEs	\$8,166,604	14.22%	39.67%	\$22,791,564	*	-13.41	(\$14,624,959)

An asterisk (*) denotes statistical significance at the .05 level.

Chart 3.6

Disparity Analysis - Purchasing Dollars



cooperation of all businesses to provide the information if not available in the public domain. Accessible data sources, such as M/WBE certification applications and Dunn & Bradstreet reports are not available for all groups.

The capacity issue requirement can also be addressed by analyzing the size of contracts. Where the distribution of contracts by size demonstrates that a significant percent of the contract awards are small contracts or the capacity requirements will be low and the capacity needed to perform may be minimal.

The analysis of the City's contracts, by size of contract, for M/WBEs and non-M/WBEs, for the three industries is presented in the following tables. Tables 3.47 to 3.49 and Charts 3.7 to 3.9 present the distribution of contracts by contract size (dollar value) for construction, architecture and engineering, and purchasing. More than 80 percent of the contracts awarded by the City have been small (less than \$50,000).

Data analysis for each group demonstrates that women-owned businesses are being utilized on City contracts mostly for contracts under \$50,000. For all industries, minority female contracts fall in the under \$50,000 category most frequently. For example, 97.9 percent of the contracts received by minority females were under \$50,000, while the percentages for Caucasian females, minority males, and Caucasian males were 93.8 percent, 86.5 percent, and 91.9 percent, respectively.

- ***Construction Contracts:*** Moreover, as depicted in Table 3.47, a vast majority of the construction contracts that have been awarded by the City have been small. Of the construction contracts awarded, 71.9 percent were less than \$50,000, a size sufficient for a small firm bid.
- ***Architecture and Engineering Contracts:*** In Table 3.48, 87.0 percent of the architecture and engineering contracts have been under \$50,000.
- ***Purchasing Contracts:*** As depicted in Table 3.49, 96.2 percent of the purchasing contracts have been less than \$50,000.

XI. EXPENDITURE SURVEY

An expenditure survey was conducted to verify that M/WBE subcontractors have been used at the level in winning prime contractor bids. A questionnaire was mailed to 178 M/WBEs listed on City of Oakland contracts issued between 1991-94. The response rate was 79 percent — 141 M/WBEs completed and returned the questionnaire. Table 3.50 depicts the survey results.

Table 3.47
Size of Contracts - Construction
Fiscal Years: 1991 - 94

Size	Minority				Caucasian				Total	Total		
	Females		Males		Females		Males					
	Freq	Percent	Freq	Percent	Freq	Percent	Freq	Percent				
\$1 to \$50,000	80	88.89%	321	66.05%	123	87.23%	293	70.10%	817	71.98%		
\$50,001 to \$750,000	10	11.11%	161	33.13%	18	12.77%	108	25.84%	297	26.17%		
\$750,001 or more	0	0.00%	4	0.82%	0	0.00%	17	4.07%	21	1.85%		
Total	90	100.00%	486	100.00%	141	100.00%	418	100.00%	1,135	100.00%		

Test of Independence among Minority Females, Minority Males, Caucasian Females and Caucasian Males

Chi Square **>30**

Degrees of Freedom **6.0000**

P-Value **0.0000**

Conclusion: At least one group is statistically different in its size distribution.

Test of Independence between Minority Females and Minority Males

Chi Square **18.8269**

Degrees of Freedom **2.0000**

P-Value **0.0001**

Conclusion: Minority Females and Minority Males differ statistically in their size distribution.

Test of Independence between M/WBEs and Caucasian Males

Chi Square **17.9309**

Degrees of Freedom **2.0000**

P-Value **0.0001**

Conclusion: M/WBEs and Caucasian Males differ statistically in their size distribution.

Chart 3.7

Size of Construction Contracts



Table 3.48
Size of Contracts - Architecture & Engineering
Fiscal Years: 1991 - 94

Size	Minority				Caucasian				Total	Total		
	Females		Males		Females		Males					
	Freq	Percent	Freq	Percent	Freq	Percent	Freq	Percent				
\$1 to \$50,000	13	92.86%	65	91.55%	37	92.50%	100	81.97%	215	87.04%		
\$50,001 to \$100,000	0	0.00%	3	4.23%	1	2.50%	10	8.20%	14	5.67%		
\$100,001 or more	1	7.14%	3	4.23%	2	5.00%	12	9.84%	18	7.29%		
Total	14	100.00%	71	100.00%	40	100.00%	122	100.00%	247	100.00%		

Test of Independence among Minority Females, Minority Males, Caucasian Females and Caucasian Males

Chi Square 6.1453

Degrees of Freedom 6.0000

P-Value 0.4071

Conclusion: The four groups are not statistically different in their size distribution.

Chart 3.8

Size of Architecture & Engineering Contracts

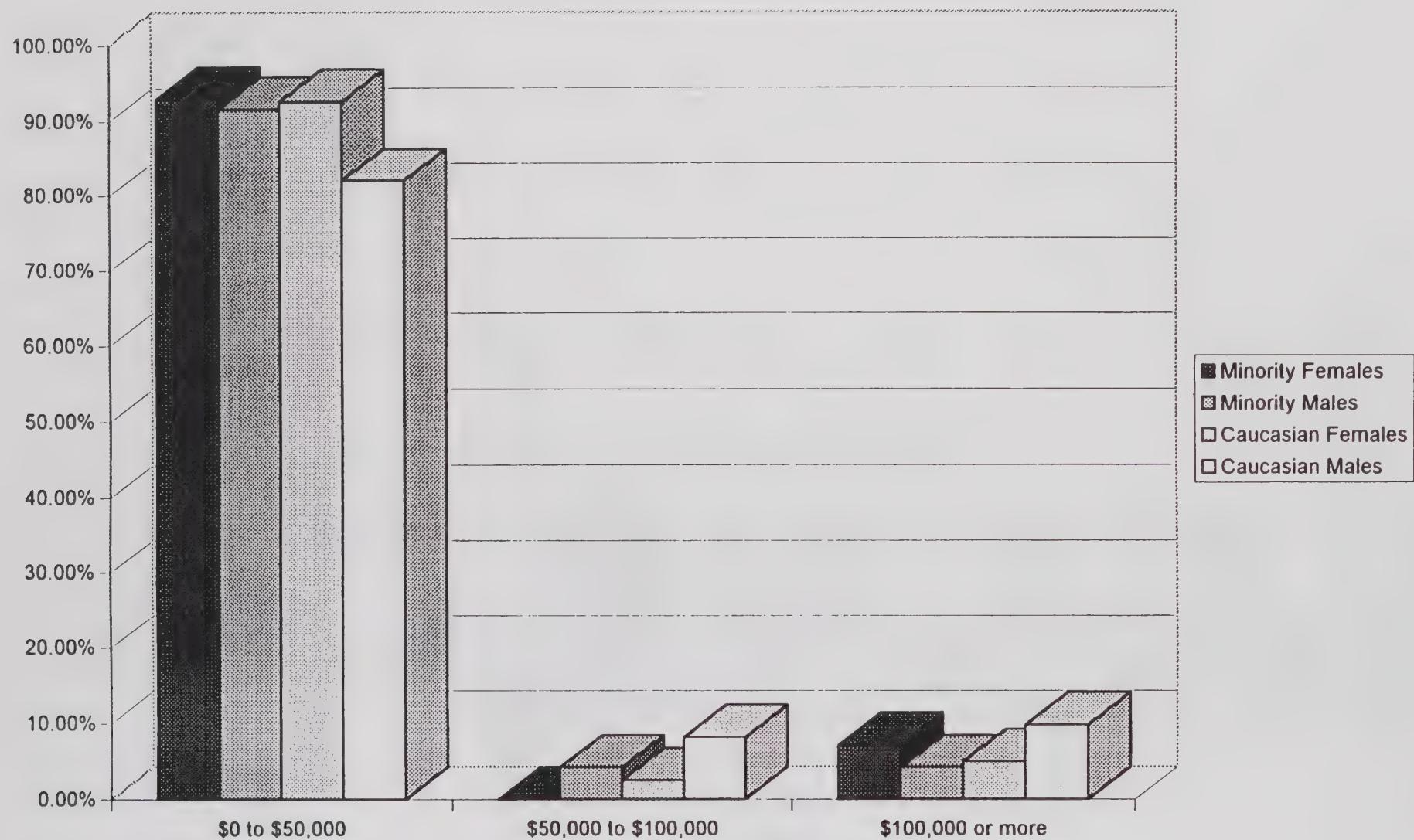


Table 3.49
Size of Contracts - Purchasing
Fiscal Years: 1991 - 94

Size	Minority				Caucasian				Total	Total		
	Females		Males		Females		Males					
	Freq	Percent	Freq	Percent	Freq	Percent	Freq	Percent				
\$1 to \$50,000	665	99.25%	763	99.09%	331	96.78%	3,284	95.00%	5,043	96.26%		
\$50,001 to \$100,000	5	0.75%	4	0.52%	5	1.46%	73	2.11%	87	1.66%		
\$100,001 or more	0	0.00%	3	0.39%	6	1.75%	100	2.89%	109	2.08%		
Total	670	100.00%	770	100.00%	342	100.00%	3,457	100.00%	5,239	100.00%		

Test of Independence among Minority Females, Minority Males, Caucasian Females and Caucasian Males

Chi Square > 30

Degrees of Freedom 6.0000

P-Value 0.0000

Conclusion: At least one group is statistically different in its size distribution.

Test of Independence between Minority Females and Minority Males

Chi Square 2.9062

Degrees of Freedom 2.0000

P-Value 0.2338

Conclusion: Minority Females and Minority Males do not differ statistically in their size distribution.

Test of Independence among Minority Females, Minority Males, and Caucasian Females

Chi Square 12.5109

Degrees of Freedom 4.0000

P-Value 0.0019

Conclusion: Minority Females, Minority Males, and Caucasian Females do not differ statistically in their size distribution.

Test of Independence between M/WBEs and Caucasian Males

Chi Square 46.3545

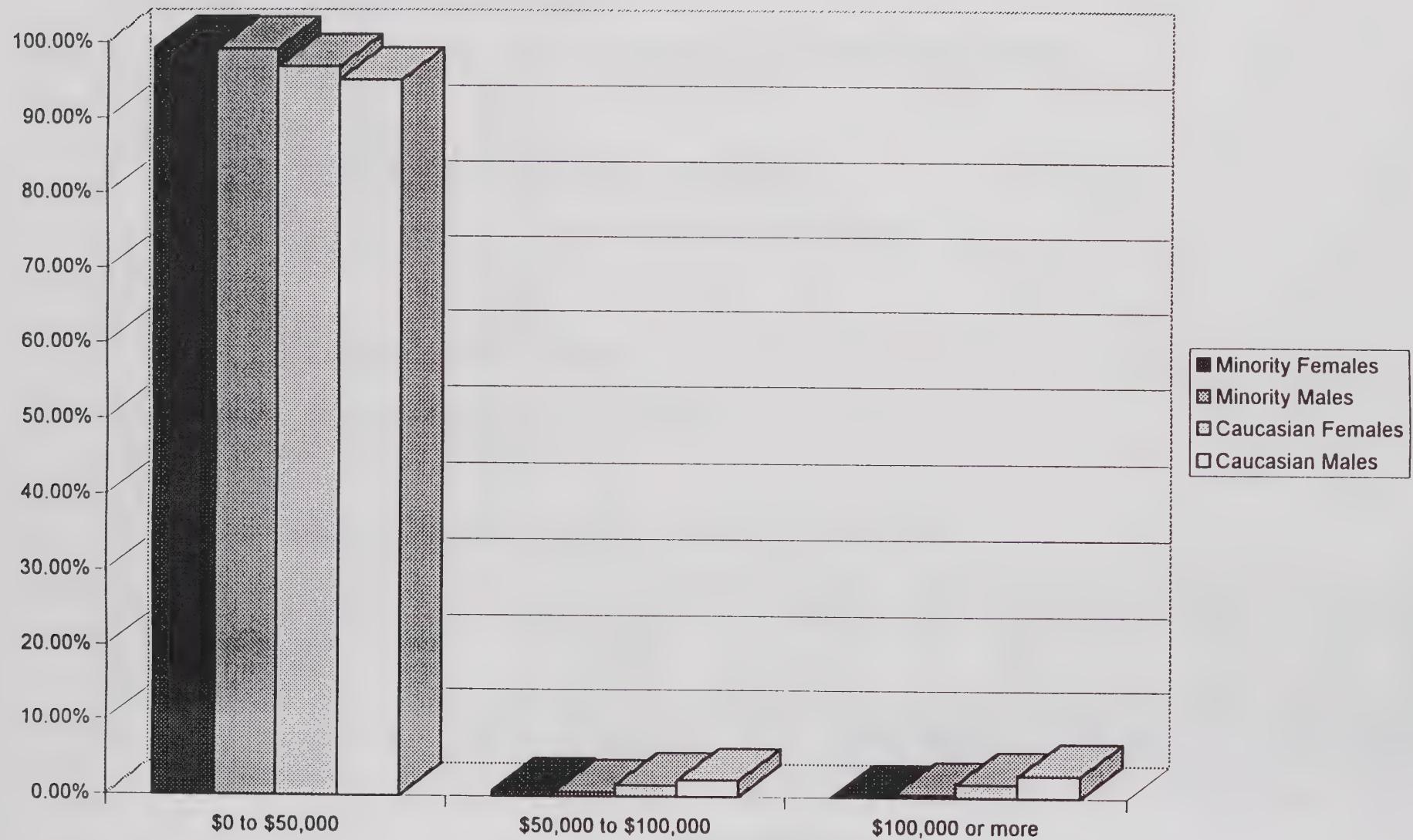
Degrees of Freedom 2.0000

P-Value 0.0000

Conclusion: M/WBEs and Caucasian Males differ statistically in their size distribution.

Chart 3.9

Size of Purchasing Contracts



Generally, 28 percent of the sample received more dollars than the bid, 31 percent received less, 28 percent received the bid amount, and 13 percent were not used on the contract.

Differences between the expenditures to M/WBEs is more dramatic.

- Three-fifths of the African American businesses received less dollars than the bid amount or no dollars at all. The balance received more than bid amount.
- Thirty-eight percent of Asian Americans received more dollars than their subcontract amount in the contract. In addition, those businesses more often than other groups received the same as bid and less often received less than bid or no dollars.
- Hispanic Americans frequently did not receive any contract dollars in spite of being bid by prime contractors. Forty percent received no dollars. Also, while 25 percent received more than the bid, 30 percent received less than the bid. Only 5 percent received the bid amount.
- Caucasian females, more than any other group, frequently received no contract from the primes including them on bids — 42 percent received no work. This group also seldom received more than the bid and frequently received less than the bid, at 17 percent and 25 percent, respectively.

Table 3.50. Results of the Expenditure Survey

Ethnicity	Received More Than Bid	Received Less Than Bid	Received Same as Bid	Received No Dollars	Total Responses
African American	32%	39%	8%	21%	72
Asian American	38%	8%	38%	15%	13
Hispanic American	25%	30%	5%	40%	20
Caucasian Female	17%	25%	17%	42%	36
Total	39	44	40	18	141
Percent of Total	28%	31%	28%	13%	

Subcontractors were asked in the survey why they believed they got more, less, the same, or no dollars from the project work. Reasons they provided are:

- *Reasons for Less:* Some reasons given were that there was less work than estimated, the job was incomplete, nothing else ordered, or contractor stopped paying.
- *Reasons for More:* Some reasons given were that additional work was required or supplies ordered, or the construction schedule was extended.
- *Reasons for None:* Some reasons given were that no purchase order was received, they were not notified they got the job, or they were told they did not get the job.

4

ORAL HISTORY ANALYSIS

I. OVERVIEW

A. The Purposes of Anecdotal Testimony in Croson Studies

The United States Supreme Court, in its 1989 decision *City of Richmond v. J.A. Croson Co*, specified the use of anecdotal testimony as a means to determine whether remedial race- and gender-conscious relief may be justified in a particular market area. In its *Croson* decision, the Court stated that “evidence of a pattern of individual discriminatory acts can, if supported by appropriate statistical proofs, lend support to a [local entity’s] determination that broader remedial relief be justified.”¹

Anecdotal testimony of individual discriminatory acts can, when paired with statistical data, document the routine practices by which minority- and woman-owned companies are excluded from business opportunities within a given market area. The statistical data can quantify the end results of discriminatory practices, while anecdotal testimony provides the human context through which the numbers can be understood. Anecdotal testimony from business owners provides information on the kinds of discriminatory acts that exist within the market area; the means by which discriminatory barriers occur; the frequency with which those barriers occur; who perpetrates them; and, their effect on the development of M/WBE businesses.

B. Methodology

In this study, the method of gathering anecdotal testimony was the oral history interview. Oral history is defined by the *American Heritage Dictionary* as “historical information obtained in tape-recorded interviews with individuals having firsthand knowledge.” This

¹ *Croson*, 488 U.S. at 509

type of in-depth interview has been determined by Mason Tillman Associates to be superior to other forms of gathering anecdotal evidence — the mail or telephone survey, or public hearing testimony — because it affords the researcher a greater opportunity to gather not only the effects of discriminatory practices on M/WBEs, but also the means by which those practices occur. It also affords the M/WBE a protected setting in which their anonymity can be preserved.

By allowing interviewees to describe in detail and in their own words the barriers they have experienced in conducting business, information can be collected as to how barriers occur, who creates them, and how they affect the development of M/WBE businesses. Thus, the information obtained not only sheds light on an agency's present M/WBE program, but offers vital insights for future program needs and changes.

A disparity study was being conducted for the Port of Oakland during the same period as the City and Redevelopment Agency's disparity study. One set of oral history interviews was conducted at the same time for those agencies.

The interviewees who participated in this study were solicited through a variety of channels, including public meetings, contract and certification records, and business networking. Once targeted, interviewees were pre-screened to determine whether they fit the appropriate occupational category, operated within the defined market area, and were willing to commit to the interview process.

The interviews lasted an average of two hours. A standard survey guide was designed to cover all aspects of business development from start-up to growth issues, and from public and private sector experiences.

Once completed, the interviews were transcribed and analyzed for patterns and practices of discrimination. From this analysis of the transcripts, the anecdotal report was completed.

C. Interviewee Profiles

A total of 50 business owners were interviewed for the City, Redevelopment Agency and Port of Oakland. The following Oral History Interviewee Profile Chart illustrates the composition of this study sample and the number of business owners who had anecdotal accounts involving the Port. Fifty-one percent were African American, Asian Americans were 16 percent, Hispanic Americans were 4 percent, and 4 percent were Native Americans. For gender groups, 57 percent were males and 43 percent were females.

In addition, interviewees were selected from construction, architectural and engineering, and procurement business areas. Forty-eight percent of the interviewees were in the construction business, 24 percent were in architectural and engineering categories, and 28 percent were in the procurement categories.

TABLE 4.1

CITY, REDEVELOPMENT AGENCY,
AND PORT OF OAKLAND
ORAL HISTORY INTERVIEWEE PROFILES

ACTUAL MINORITY/WOMEN INTERVIEWS ACCOMPLISHED	50
<u>AGENCY SPECIFIC EXPERIENCE</u>	
CITY OF OAKLAND	44
PORT OF OAKLAND	35
OAKLAND REDEVELOPMENT AGENCY	8
<u>ETHNICITY</u>	
AFRICAN AMERICAN	27
HISPANIC AMERICAN	2
ASIAN AMERICAN	8
NATIVE AMERICAN	2
CAUCASIAN	11
<u>GENDER</u>	
MALE	29
FEMALE	21
<u>BUSINESS AREA</u>	
CONSTRUCTION	24
CONSTRUCTION RELATED ARCHITECTURAL AND ENGINEERING	12
PROCUREMENT	14

II. DIFFICULTY BREAKING INTO THE CONTRACTING NETWORK

An overwhelming number of M/WBE business owners interviewed in this study, 68 percent, stated that their primary problem involved the difficulty of breaking into the contracting network. The established network of white males, often referred to as the “Good Old Boy’s Network,” that has controlled most industries for decades, if not centuries, poses a barrier to minority- and women-owned businesses attempting to establish themselves in a particular industry. M/WBEs often find that Caucasian male business owners already established in the network choose to work with friends, or shy away from working with M/WBEs because of a skepticism of their professional abilities.

One minority business owner in the construction field, where the “Good Old Boy’s Network” is particularly strong, described the situation like this:

General contractors are used to dealing with people in the “Good Old Boy’s Network” system and they deal with them. As far as giving you a chance, they won’t give you a chance unless you physically challenge them. They list you on bid date. They try to change things after bid date. They try to substitute you, so the battle to keep a contract is one major problem. Yes, there are problems out there.

A minority business owner in the professional services category described his experience with the “Good Old Boy’s Network” as a closed door that would not open:

[P]rivate sector jobs are [obtained] if you know somebody. Almost the same as with the public sector but it’s magnified because the door is closed [in the private sector] because it’s a “who you know” system. They don’t really even open the door up.

A business owner with over six years experience in both the public and private sectors stated that many prime contractors are uncomfortable dealing with minority firms:

Generally, I would say [this is true] even for public and private sector [companies although] more for private than public: If there is a group of people that a certain company has worked with, they generally tend to go back to that company. It seems that most of the private companies are more comfortable with larger White firms rather than going with a smaller minority firm to do work.

One female business owner who had at one time been part of a local business council of corporations established to support MBE purchasing stated that, although the council

declared it had supported the inclusion of M/WBE businesses in local contracts, she had proof the council had turned a blind eye to its members' refusals to work with M/WBEs:

I had the "Good Old Boy Network" in [this council] up there saying that, "Our members go out and they really try to get the minorities and we do our good faith effort." At one point in a meeting, I said, "No you don't, because as an estimator for [two large local white male owned firms], I would try to bring in those minority contractors and even when they were low, I would sit down with them and make sure they had everything covered and I would list them. When it came time to award the contract I would be told by the upper echelon, "No, we don't want to do business with them. We want to do it with so and so." They wouldn't give them the jobs. They would not tell them if they were low bid or not.

Many M/WBEs find themselves excluded from professional as well as social meetings at which they could expand their business contacts. One woman describes her exclusion from both a professional organization and social outings among male peers with whom she routinely conducted business:

I can remember one example some time back. There was a professional organization that I knew about and I knew some men that were in it and I always had an interest in it but nobody would ever tell me much about it or invite me to any of the meetings. I didn't really feel I was welcome to go to it . . . I guess where I feel we are excluded is just on some of the networking and social things that go on behind the scenes with people who do business together. I have some people that I routinely do business with that go and play golf with some of the other guys in the industry or they go skiing or this or that and they don't really want to invite me along — something like that. It's more a guy's day out, but they are doing business while they're doing it.

As several M/WBE business owners in this study described, they experience a "Catch 22" situation when trying to break into the established network in their fields. They can't gain experience if no one will use them, and no one will use them on a project if they don't have prior experience. This is exacerbated for minorities and women, however, because many people in hiring positions often have prejudicial beliefs that M/WBEs lack ability or education.

One minority business owner in the procurement category explained the networking barrier like this:

I think part of the problem is that if you're not a known entity and you try to find out what type of contracting opportunities there are within the public sector, because you're not a known entity, because you don't have any track record or experience with a particular agency, you may not be viewed as being able to handle the work — as being capable. So, it's kind of a "Catch

22" situation: If you don't have the track record and you don't have the experience, then how can you get the experience to prove yourself so that the people in the particular agencies know that you are capable of handling the contract?

But as we heard in a quote above, many M/WBEs find that, simply because of their race or gender, they are treated with greater skepticism when trying to break into the established network in their field:

I feel that people tend to use the people they know. They use the firms that they have used before . . . I have several personal experiences with larger offices and [in] one of the offices one of the principals happened to be a friend of mine. He expressed that view point, he said, "If I go out and pick them from the minority directory, I don't know what to expect from them." [But], you know, we can produce a service that is equal or if not better than any other firm. We are just not given a chance.

Some M/WBEs claimed that, despite the institution of public policy to provide for their inclusion in contracts, some public officials also exclude them from contracting networks:

[W]hat happens is that regardless of what [public] policy is, there are people in public works departments, or people who run public entities, who have formed relationships with other people that are more profitable.

Because of these barriers within the contracting network, many minorities and women find that they must work much harder to prove their abilities and wear down the resistance against them. One Hispanic contractor, with over thirty years in his field, stated that he must be extremely aggressive to overcome the "Good Old Boy's Network":

Even though we were a business working for other companies in the past, we had to come in and . . . prove ourselves again. We had to send letters out to city agencies, to various public works agencies and, even to date, one of the hardest nuts to crack around here is the school districts. The school districts have part of their "Good Old Boy" network system. They have people that they are used to dealing with now and don't want to open doors for you unless you go in and put your foot in and don't let them close it. So, being aggressive out there is what we have to do to survive.

A WBE business owner with 16 years experience in the procurement field stated that, unless there is some outside stimulus for change, such as affirmative action programs, the "Good Old Boy's Network" in her field will never open up to outsiders. As she states below, these networks are indifferent and simply impolite to her:

It's very difficult to break that "Good Old Boy's Network" with contractors. No, it's just getting them to take the time to listen to what services my

company can provide and what capabilities we can provide and get them to use us — overcoming the obstacle of, “That’s very nice you offer all of those things, but we have a vendor. We’ve been doing business with that vendor for years and we’re very happy with them.” I think there has to be some impetus to change. If they are accustomed to doing business with a particular vendor there is no reason to change — they’re comfortable with it. It’s trying to get the contractors to at least try our business — to try our services — to give us the opportunity to work on a particular contract. I think that if it weren’t for the goals in the public sector contracts then we would not have the opportunities that we have today If I’m at an event and I’m trying to meet certain contractors and talk to them about our services it seems as if they’re . . . impolite. I just don’t think there is an interest on their part.

Other M/WBEs interviewed echoed the sentiment that without affirmative action program goals, it would be impossible to break through the closed network of Caucasian male contractors in their field:

We certainly haven’t made any inroads at all in marketing in the private sector, for instance [But] many public sector agencies are being careful to go out and make a real outreach by trying harder.

Another minority business owner put the need to overcome the “Good Old Boy’s Network” with affirmative action goals very succinctly:

[T]he “Good Old Boy’s Network” can become a big problem when they propose to do away with affirmative action Then I think it’s going to be connections between people.

III. RACIAL AND GENDER DISCRIMINATION

According to M/WBEs, many of the reasons behind their exclusion from professional and social networks lie in basic prejudices against them based on their race or gender. Fifty-seven percent of minorities reported experiencing identifiable racial discrimination. In turn, 68 percent of the women interviewed in this study reported that they had experienced clear discrimination based on their sex. The actual figures are probably higher. However, due to the social and legal consequences of race/gender exclusions, discrimination is often subtle, even hidden, and thus more difficult to both identify and document.

In the following sections we will examine the sexual and racial discrimination experienced by M/WBEs in this study, and will look at the effects those experiences have had on the development of their businesses.

A. Racial Discrimination

As stated above, 57 percent of the minority business people in this study stated that they had experienced some form of discrimination based on their racial background. While racial prejudice is often veiled and those who discriminate often do not do so directly, there were cases reported by these interviewees where there could be no doubt.

A minority contractor described a situation in which he was disregarded before he could prove his own skills and his company's track record. When attempting to solicit new business from a neighboring contractor, he was summarily rejected based on the fact that he was a minority:

I strolled across the street to give them a little pitch on my business and give them my card. One of the proprietors came to the counter and I told him who I was, handed him one of my business cards and told him I would certainly like an opportunity to bid on some of his work. He proceeded to ask me about some other minority contractors [in my field] . . . and he told me that he had had nothing but problems with them, that they would never do anything for him anymore, and that he wasn't interested. He threw my card back to me. I told him that he could keep the card and he said, "I don't need it." I never will forget that it was awful[ly] hurting. I turned and walked out and thought that was awful.

One African American woman in the procurement field described an incident in which she experienced blatant discrimination because of her race:

[T]here are a couple females [with whom] I've encountered really ugly stuff. [At a business] in Alameda . . . I'm there pitching myself . . . I'm trying to get an appointment and find out who buys [my products]. And [the woman in the store] looks at me and says, "Well, gee, it's me and I certainly wouldn't do business with you." I said, "Why is that?" [S]he says, "We don't deal with Black companies." Right out. I got so angry. . . . And I went back in there and I stood there and I didn't know what to say to her. I didn't know . . . I was hurting inside. I remember feeling like somebody stabbed me with a knife in my stomach. It was . . . it just messed the whole day up for me. But I still persisted that day. I still went to some other [businesses].

One minority engineer stated that, in the engineering field, there are prejudices about what kind of engineering projects African Americans are able to undertake. As he states, they are accepted as civil engineers, but as structural engineers they are discriminated against because the latter discipline is riskier and has more liability associated with it:

[T]here's been a . . . perception in the industry that . . . civil engineer[ing] is probably more a discipline [for] African Americans and that primes will feel

more comfortable having African Americans work on, and that structural engineering is not one that primes would feel comfortable having African Americans as subconsultants for, and that is a perception that is very, very difficult to overcome.

Being judged on the basis of their racial identity rather than their individual capabilities is a common experience for minority business people. One African American man described the pattern of bias against his abilities that he encounters. But as he states below, he cannot let that bias stop his efforts, so he simply works harder to overcome it:

I think [you are] judged before they see what you can do but not judged after you're done. Because most of the time after they see what you have done and they are very happy and they are very grateful. I get calls, "Oh, that was so nice, etcetera, etcetera." But before is the harder part. I tell you they are already judging that you can't produce.

I have no doubt that it has [affected me] but I don't let that stop me though. There are situations that I know [I've been judged unfairly] — it's a fact. But at the same time I don't use that or I don't dwell on that. I know it's always going to be a problem . . . being African American. So what I've done is not used that to stop me. I've tried to use that negative to turn it around and be a positive. I have to work a little harder but that is okay because I know what it is.

Some of the minorities interviewed here state that they also experience judgment and resentment due to the M/WBE goals of affirmative action programs. As one interviewee stated, "I would say, generally, people don't put a lot of faith in you if they think you are there because of some MBE ordinance . . . That, I think, is more of a minority problem."

An Asian business owner with over six years experience in a professional services field stated that his firm is often treated with disrespect when it is included on a team to fulfill M/WBE requirements:

There are many times when I have worked with larger firms where . . . they put us on the team because they had to satisfy some minority requirements. Because of that they felt that we were only there because we were filling the minority requirements. They didn't really give us a chance to prove ourselves. We were automatically put into the category just as more of a support firm rather than doing a major portion of the work or anything really that important — not menial tasks really just really lower priority projects or lower priority accounts.

This businessman attempts to overcome such prejudice by working harder to prove his firm's abilities. But, as he states below, he is not always able to change the bias on the part of prime contractors:

On those types of projects where that has occurred, I would say, that generally happens and you just have to work a little bit harder to try to prove your abilities . . . If you get along and the project comes out okay, generally they would give you some credit for it. If the project doesn't come out okay, they will tend to put the [blame] on the subcontractors or put the blame on the minority requirements or any type of thing that may or may not have anything to do with why the project went bad. I would say the subcontractors would be the first to blame if it goes bad.

Another minority contractor explained that he, too, must work harder because of prejudice against his firm's abilities. He finds that his firm is held to higher standards than are similar majority firms, and that he pays the price of having to work harder to clean up others' mistakes:

[W]henever something comes up we have to always be what I call "perfect." There's less margin for deviating from the norm when it comes to what we do, and . . . it's not fair . . . On another project that we were working on with [a prime contractor], it's been a complete disaster for them and we're having to spend more time working because they've messed up, but there's nothing we can do or say about it.

As we will see in the sections on financing, bonding and insurance, these efforts to scapegoat minorities and women when project problems arise often come back to haunt M/WBEs when attempting to obtain loans, credit, bonding and insurance, making it difficult for them to display unblemished track records.

Harassment and Ostracism

Forty-three percent of minority business owners reported experiencing some kind of harassment or pressure during the course of running their business. The common belief is that MBEs are resented for their mandated participation on projects, and are made to "pay" on some level.

One minority contractor stated that it is a lack of respect for minorities that leads to their mistreatment:

[A]gain I think it's . . . how you're perceived as a minority contractor once you get out there in the open market . . . I think you just become a small fish in a big ocean. So they feel that they can do with you what they want to . . . you have to be able to be established in order to obtain, you know, the respect . . . before they actually start dealing with you like that.

Minorities can experience harassment from a myriad of sources during the course of operating their businesses. As the African American businessman quoted below states, harassment can even come from their own employees:

I got a call from the labor foreman out there on the job and he said to me, "I think you've got a problem with one of your foremen here . . . There's some graffiti that's being written on the toilet walls and it's derogatory about Blacks and . . . we've pinned it down to your foreman." So you see, all of this stuff written on walls, I used to see it a lot when I was working as an electrician. You never know if it's the guy working right along beside you . . . they disguise a lot of their feelings.

Being harassed on a job site can take many forms. One minority contractor describes a situation in which two Caucasian laborers would not take orders from him because he was Black. In the end, he was forced to let them go because getting the job done was too difficult:

[Y]ou can sense some of [the white workers] don't appreciate working for a Black firm and you can [tell] that they don't like taking orders from a Black person. [These two men] didn't want to deal directly with me and I had to terminate [them] because they would tell me that I couldn't tell them what to do, that I had to talk to their foreman . . . but as long as I'm paying him and signing his check I'm going to talk to him or he can't work for me.

An African American man in the construction field stated that his firm has sometimes been harassed through the use of change orders. He describes a situation in which change orders were requested of him due to inadequate project drawings, but he was refused payment for his work. He spent over two years in court trying to resolve the problem:

[W]e were harassed almost constantly. There were just a large number of change orders because the drawings were inadequate, and the City didn't want to pay for the change orders. [W]e finished the job . . . but we ended up in court for two- and one-half years.

A minority business owner whose company had a subcontract for CalTrans stated that during the course of the project his scope of work was increased but he was not offered additional money to cover that work. When he complained, his firm experienced retaliation:

On one project where we were working with that large firm that gave us more scope but kept the budget the same. We actually complained to CalTrans about what was happening. After that . . . when we were going up for another CalTrans project, it was rumored that CalTrans had asked other prime contractors not to use us as subs.

An Asian business owner who has been in the construction field for ten years stated that he is often pressured to reduce his charges on a project. He provided the following example:

I have encountered this . . . with the private sector. It seems to me that we are always told that we are overpriced or . . . [as an example] we went out to the job site for a few hours and why do we have to charge more than the few hours to write the report. I mean, we have to come back in and think it through and this is time that we spent that cannot be evaluated. Half of the people don't appreciate the calculations that we do and the owner or contractor never sees.

One African American contractor explained that he has sometimes been harassed on job sites to perform work above and beyond the specifications by which he quoted the work. On a job in the Oakland area, he was required to do expensive additions. When his complaints to the agency involved netted no results, he found it necessary to leave the job rather than to incur the expense of either doing the work or fighting the inspector:

[E]ventually . . . based upon the way they were dictating to me and what was happening, I had to formally back out of the contract. It was the only contract that I ever had to back out of. I could not complete this job.

B. Gender Discrimination

As stated above, 68 percent of the women in this study reported experiencing discrimination based on their gender. Many of the women found that their abilities and knowledge were questioned simply on the basis that a women could not know the kind of information required for a particular job.

One woman with over 16 years experience in the construction industry, where sexual discrimination is rampant, described how she is often questioned because men do not believe that, as a woman, she could possibly know about the construction industry:

I think the appearance is that . . . "How could you know this much?" . . . or "How can a woman know this much?" It's basically the way these things are put across . . . I feel like I'm having to establish my credibility all of the time, only because this is not per se a woman's industry.

The same woman went on to describe how her male counterparts often try to intimidate her where they would not do so with men in a similar situation. She stated that, in order to reduce the resistance to her as a female business owner, she sends male employees to handle a job. Then the problems disappear:

I have a female project manager. There are times when she has come up against [resistance from men], at which point she may be so frustrated and

she will come in to me and I will basically instruct her as I've done myself in the past, "Go ahead and take it to [a male employee]." Suddenly everything gets to be okay — if you follow me. He'll tell them the same thing and it is fine . . . It's much better in those situations where I drop out of the picture and let them deal directly with one of my male staff.

A woman in the procurement field described a situation in which she attempted to sell items to a company she knew bought the items because she had been a purchasing agent in that field. However, the buyer she encountered was an older male who told her that the company didn't buy such items, when she knew they did:

[W]hen I first started the business I went and saw their purchasing agent. I used to be a purchasing agent myself and he is the most unqualified person I ever saw. He was a gentleman and he told me loud and clear, "Well, we don't buy any of that stuff." I know very well they do. [I believe he said it] because I was a woman. Well, for two [reasons] — because I was a woman and he was a gentleman in a job that he wasn't qualified to do.

Other women described situations which were difficult or impossible for them simply because they were women business owners. One woman gave up her marketing efforts to the Department of Defense after experiencing extreme difficulty with communication — a difficulty resulting from Department officials' discomfort with her gender.

It is this kind of unspoken discomfort or unexplained vagueness in communications that many minorities and women must deal with. One woman in a professional services field that is dominated by men stated that, while nothing was said directly to her, it took her five years to prove herself in the field and win credibility among her peers:

[It] took me many years before I felt that I was able to establish credibility in the industry. Well over five years, I think. [This] industry . . . is very much a man's business. The majority of the people are men and it's a tough business. I don't think a woman coming into the business was easily welcomed for credibility reasons — I guess strength and being very, very aggressive out there. Not only with general contractors and suppliers but with workers dealing with many trades.

A woman in the engineering field who is trying to move her company into prime contracting positions, stated that men have been slow to accept her as a peer, and that she is still pigeon-holed according to stereotypes about women. At one project meeting she was asked by a member of the project team if they would have to put curtains on the site office if her company was going to be on the team. Although this statement has the tone of a joke, it also represents the belief that she is an outsider and cannot fit into the work situation as it currently is.

Another woman in the professional services field who was trying to break into the Fortune 500 company network stated that she was scrutinized heavily because she was a woman:

I have made attempts and I have found that they want to [assess your seriousness] as a woman. They ask if you're married. They are pushing it and thinking maybe you're a joker and not serious about your business. I have tried. I've tried to . . . pass out flyers, to meet with the person, try to set up appointments It doesn't get me anywhere. I have not gotten anywhere with that.

One woman stated that simply because she is Black and female, she is perceived as incapable. She must repeatedly prove herself, rather than being able to stand on the merits of past performances. She described it like this:

Because I'm a woman and because I'm a Black woman, I think that they figure that maybe you can do a \$5,000 job. But other than that I don't think they feel that you're capable of doing [big jobs] I have trouble, I perceive problems that I've had with males. Again, it's almost like you've got to continuously prove yourself.

Being accepted as business owners is often difficult for women. One female business owner stated that when she receives phone calls in which she explains that she is the company's owner sometimes the caller will hang up:

There are times when someone will call up and ask for Mr. [So-and-So] and I'll try to explain that there isn't any Mr. here but could I help them and have them say, "Oh, no," and have them hang up on me.

1. Harassment and Ostracism

Women business owners state that they often experience harassment or pressure when male companies are forced to work with them. This harassment sometimes extends to physical abuse. One female engineer recounted several instances of physical harassment on job sites during the course of running her business:

[I experienced] things like going into a portable toilet and the contractor picking it up with a piece of equipment while I was in it or opening a role of plans and all of this pornography flying out. Once I was hung by my ankles down a sewer manhole. I have been physically threatened — verbally threatened. Things like that just seem to just happen.

Verbal abuse against WBEs is not an uncommon experience. One woman recounted the verbal abuse by a public agency staff member as she attempted to conduct business:

The purchasing person was a lady and was fine. Her manager, I'm not quite sure of his title, was fine. When we go over there to look at the windows to measure them and this type of thing — this one guy looks at me — he was the foreman — he says, "Oh, that is a woman-owned business. What a tax write-off you have." I was thinking, "What is this guy talking about?" He just ran off at the mouth like that. I said, "I'm a 100 percent woman-owned business. I've been in business since 1988." You're in a difficult situation where you're bidding and you have someone running off at the mouth like that.

The same woman experienced another difficult incident when working on a project at a local transit agency. She was treated more harshly than her male counterparts by a staff person there:

[The staff member] wouldn't accept my signature on the certificate of conformance. When he called me down there, the buyer wanted me to write everything on the [form] and I was to sit at this table and write a list like a bad kid. He rethought it and said, "Never mind don't do that." I said, "I wasn't going to do it anyway." Someone got through to him that this is not how — but they treat you terribly. You can be in line to see somebody and most of them are most gracious. The others — you will wait and men will go first . . . the Agency is big on that. Another thing you will see at the Agency — and you don't see it as much as you used to see it. The [men] would come in there and they would get into the buyer before you do.

As one woman in the construction industry for 14 years stated, there are many things besides physical harassment that can be done to cause problems for women-owned companies:

Whether it is subconscious or conscious, that element [of harassment] does exist. It's easier to take over small women-owned businesses, take advantage of them if possible, [like] withholding monies, being very vague with communications, trying to put as much as possible on the subcontractor. Unless you are really aware of the specifications and what your job is, [they] will try to get you to do as much as they can get you to do.

One woman in a professional services position stated that after being interviewed and ranked #1 for an East Bay city, she was pressured to make payoffs to City Council members in order to get the job: "[W]e thought of filing a suit or complaining about it. We ultimately decided it wasn't worth our time." Another woman working on a local construction project was pressured to do the job under code: "[W]e said, 'No.' I wouldn't put my company on the line for anything like that."

A woman operating a business in a professional services category for 30 years stated that she experiences pressure from prime contractors based on assumptions that she does not

understand her contract. It often takes a fight for her to make them see that she knows her legal rights and cannot be manipulated:

I just had one [incident] here about a couple of weeks ago where we bid a job and we were specific in what items we bid In fact my quote was very explicit that I only included certain parts. This guy calls me up and he says, "Well, you're going to supply me with these ladders." I said, "I don't generally do that. I could try and find a source and maybe help you out." He said, "Well, no, you had signed a contract." I said, "No, look at what was attached to the contracts. It was our quote and our quote was very specific. We did not quote any ladders and I'm not going to supply you something that I didn't quote you." He is threatening me and all of that and I said, "You can go ahead and do all you want. I'm protected by my lien rights. If we have to duke it out, we will duke it out. I don't really care. I'm not going to sit here and just because you are too stupid to sit down and read these quotes when they come in and that you are not the responsible low bidder and made sure you had everything covered.

We had another guy down in Southern California who was demanding that I fill his purchase order for him when in fact that I would have except that I bid the job in 1993 [and] I specifically said, "Prices good for 60 days." A year later he sends me a purchase order and I sent him back and said, "Excuse me but the price has gone up." He said, "Well, order it, order it, and order it." I said I wasn't going to do it until he does this. He sent up a very nasty letter threatening me with back charges and all this other good stuff and I thought this is stupid. Why don't you sit down and realize the steps that you have taken to get to where you are at. So I sat down and wrote him a letter and said I've never signed his purchase in order in fact its been returned unsigned. You don't have a contract, you cannot charge me. You cannot deduct anything from me. At this point you have been so rude and nasty and go take your business and go elsewhere. I don't want to do business with someone like that. Luckily, I'm fortunate enough that if something like that comes up, that's what I'll do.

Other women stated that a barrier they often experience is the difficulty obtaining information to either bid or complete a job. One woman working in the procurement field stated that she has experienced difficulty in obtaining information which she perceives is a kind of stonewalling due to the fact that her business is woman-owned. She also experiences the "Catch 22" syndrome whereby she cannot gain experience because certain agents will not work with her, and yet they use her lack of experience as an excuse not to hire her:

I think that it is primarily if you don't have a track record, where you don't have experience with a particular agency, that you are perceived as not being qualified. I have a feel, for instance, that procurement people — and I don't want to make a generalization — but occasionally I have had experiences

where a procurement person may think that they can put you off because you are a woman or a woman-owned business: not provide you with the information until after the contract is let or not give you all of the information or not give you the opportunity. [A]s I've said before, I don't have hard evidence to say, "Well, it's because we are a woman-owned business or it's because we are a small business." I could not give you specific instances of either case. But one thing that really concerns me is limited access to information. Even if I specifically called someone to obtain the information, I feel like I can't get the information I need. I don't know whether I'm dealing with bureaucracy or that nobody knows what's going on or that people just don't want to make a change.

Many women stated that when they attempted to complain about harassment or pressure, they experienced some form of retaliation. Clearly, there is no relief for many who try to expose the abuse against them. One woman explained why she had to remain silent and not complain:

[W]hat I would do is try to laugh it off and act like it wasn't a big deal and never cry in front of them, but I would go and get in my car later and have a good cry. If I had said anything to any supervisor of mine or theirs, my career would have been severely jeopardized because they would have just said, "See, that proves [it], women can't make it out there in the field." Even today when my own women employees are given a hard time, you know, we try to kind of keep the lid on it and not let it escalate to the point where the client or anybody else gets involved because it creates a problem for them that they don't want to have to deal with. They want us to be able to be out there and not have any problems and unfortunately, this is not the case.

Another woman described a situation in which a field foreman for a local utility company demanded special favors, such as being taken to breakfast with his friends. When she complained she lost business:

[T]hey assigned me to your basic redneck field foreman who . . . always wanted to be taken to breakfast and bring everybody and his friends with him. Like I said my business is out sourced and they decided something was wrong with that and the manager at a substation in Oakland called me in even though that was clearly explained on my company profile, which they had. They yelled and hollered at me. I mean, basic yelling and hollering at these worker level people who had no idea what I was doing and I lost that business. I have since tried to recoup some business with the Utility . . . I have never so much as had an inquiry on it and I think it has to do because I have been black-balled by them and they sort of push it off as their, "Everybody has changed jobs so much . . ." — this type of thing. There might be a little truth to that but it's basically a blackball thing with them.

As the first woman in this section described, many women find that hiding the fact that their company is women-owned often solves problems and overcomes harassment or ostracism they are experiencing. As the section above indicates, many women are afraid to complain about mistreatment because of the retaliation they might experience. It is easier to disguise the female status of their business. One woman stated how she handles the situation:

Frequently, when I send out information about our qualifications and experience, I don't necessarily announce to them that I am a woman-owned business because I want to first get their attention and make them think that we are a credible company. Because of my name, [which is unusual], I often get mail addressed to "Mr.," so I can kind of hide [my gender] a little bit.

Another woman who has encountered problems of gender discrimination in conducting business stated that she has considered solving some of her problems by hiding the female status of her business: "I have been giving that some serious thought. I have not done it up to this point but I have really been thinking seriously about doing that."

2. Benefits of Affirmative Action

Many women stated that it is the imposed goals of affirmative action that have allowed them to break through the prejudicial barriers against them and work their way into the contracting network in their fields. One woman stated:

By and large, the affirmative action programs have been very, very beneficial to my firm. I am absolutely convinced that the reason that I have been invited to team on literally hundreds of projects is because I am a certified woman owned business. I will, though, say the second time that I get a call from the same firm I hope it also has to do with the fact that we do good work. But we have been one of the successes of the affirmative action programs. We have benefited tremendously. In turn I think we have given good service because we now have experience, we're giving back something to the community in the form of good quality service. Affirmative action, from my perspective, has been a tremendous benefit. The number of minority and woman owned firms that exist now compared to how many existed 20 years ago is undeniable testimony to the truth in that statement.

Another woman stated that she has certain business associates who have also been forced to work with women due to affirmative action goals, where they would not have otherwise. She is concerned for the future of her company should affirmative action be abolished:

With the whole affirmative action issue being in question, there are some people out there [from whom] I am concerned about experiencing some backlash. They are kind of resenting the program and if they get a chance to have to not have anything to do with it, they may just not give any of us business.

IV. FINANCIAL DISCRIMINATION

A. Financing and Credit

An extremely high number of interviewees in this study, 75 percent, stated that they had experienced barriers when attempting to obtain financing or credit for their businesses. Many of these business people stated that they had experienced disparate treatment from their majority colleagues when conducting financial transactions. Others stated that barriers were put before them without a logical or reasonable explanation.

A minority business person described the lack of a reasonable explanation given for a rejection by the bank. When everything looked good on paper, the business was still left hanging:

[T]he documentation that I was furnishing to the [bank] was excellent at the time. We had a track record — I had the business for, I believe, five years. All of the information was good on the reports as far as I could tell. It just kind of hit a dead end with the financial officer at the bank at that point as far as getting a line of credit. It didn't seem right to me. It may have been what was going on at the time — no one was getting credit. I don't know what her reasons were. She just said she wasn't going to approve a line of credit at that point.

One African American woman described a situation with a major bank in Oakland in which she received disparate treatment from bank employees. When asked if she was treated differently or less seriously because of her race and gender, she responded as follows:

Let's talk about the banks for a minute. Specifically, Bank of America If I go in there to deposit a check, [I am] treated so ugly. First, "Ma'am, are you the only signer on this account?" "Yes, it's my business." "Ma'am I have to get approval." You're not supposed to have this kind of money. You're not supposed to be depositing this. I get angry Every time I come in here I have to come to the same teller over and over and they put me through all this stuff. "Ma'am sit down. We cannot take this amount from you." Or something "Let me verify."

At my branch, at Grand Lake . . . they look down on you. You're treated inferior. I got a really nice order from a client and he gave me half the money up front. This is perfect. I went to the bank to deposit the money and they . . . had me sitting out there for fifteen minutes. She had to get approval from this manager, from that manager . . . from this one . . . just to deposit a check. I know for sure [white people] don't go through that. I use to bank all the time. I've seen people who use that branch a lot.

A Caucasian woman who has been in a professional services industry for 30 years stated that in recent years she went to First Interstate Bank to get funds for her contracting company. When she inquired about loans she was actually laughed at and kicked out of the office:

[W]hen I owned my general contracting company, I went in to the bank and I sat down and I said that I want to acquire a credit line and so forth. It was First Interstate Bank. The gentleman that I was dealing with was definitely an older gentleman in his mid 60's and he just sat there and laughed at me and threw me out of his office. That was my first experience.

The same woman went on to make other attempts to gain credit later, with varying results. It was not until she met a woman with connections in the financial world that she got results. As many M/WBEs stated in the first section of this report on their disadvantaged position in the contracting network, this woman felt she got ahead in the end because she was able to materialize the right connections, something more rare for women than white males:

I [eventually] bought th[is] company — I went ahead and did it. I tried to get my line of credit re-established and I have been calling Wells Fargo Bank and they said, “Sorry, we can’t help you. Be in business a year.” Bank of America did their little thing saying, “Oh yes, we have the women’s program.” You call them up and they say, “No, we’re not really interested in you. Call us back in a couple of years. You know, you are really going to have to go out and find a niche.” What I did is I hired a real swift CPA and [she] and I sat down and we called in some favors and we had her call in a gal from First Interstate and we reviewed what we had to do and it was basically, “Okay, fine. We are going to start doing things smarter now.” She sat there and literally told me what it was going to take to get a line of credit. It’s not what you know, it’s who you know. That is the whole game. You’ve got to know somebody to get in that will sit down that knows you personally knows what type of person you are — who will come in and see that the business is going in and bringing money in and it’s meeting its goals and it’s meeting its payments and will sit down and work with you.

Not all minority and women business owners experience such blatant rejections as did the woman described above. Often denials are vague, answers never tendered, or applications simply allowed to lapse. One Asian business person with 25 years in a professional services company explained that, despite the advertisement of various banking programs in the community, they had not been able to access them:

I haven’t been able to find a buck. I keep hearing people talking about how Wells Fargo’s got this and Bank of America’s got this and this one has got that. It has not materialized for me. I don’t know whether that is my fault or whether this stuff just isn’t there.

Often despite excellent credit and business history, minorities and women come up empty handed at the bank. A Native American business person described the credit application the bank denied, despite a positive credit history:

I was basically self-funded the first couple of years of my company because I was working on smaller projects and it wasn't really a big problem for me, but when we landed a larger project and this was with CalTrans, I thought that perhaps it would make it easier to get a line of credit at that time and I anticipated needing one because I knew I would have to hire people and purchase some equipment and do some other things to meet my contract obligations. I found that it was impossible for me to get a line of credit until about two years later. I have to say that I have always had a perfect credit rating and I own my home. There is nobody that probably had a better credit rating in my income bracket at that time. I couldn't get anybody to give me a line of credit because I didn't already have one. The banks have this attitude that if you need the money, they won't loan it to you and if you don't need it then they will give you a loan. I went to — I know it was at least nine different banks including some like Wells Fargo that kept saying, "Oh yes, we are supportive of women and minorities in the industry." I just couldn't get anywhere. Well, I didn't fit into their normal demographics — the traditional business person that was getting a loan.

In addition to the inconclusive or illogical rejections of M/WBEs by banks, Caucasian males in very similar situations will seem to get loans where M/WBEs could not. One female business owner of a professional services company earning a half million dollars per year stated that, after she was rejected for a loan by a bank officer, she heard the same officer treat a white male substantially differently than she had been treated:

Several months after [I was rejected], I was in one of those banks and heard the same loan officer . . . giving a story to a potential loan client — it was a white male. She was saying at the time, "Submit the information and we will see if you qualify for a loan." From my viewpoint, it had a different slant to it than when she was telling me, "No, we don't think you're qualified for the line of credit." She seemed to be telling this guy, "Of course, a little bit of paper work and we'll loan you the money."

The impasse of needing investment money to show a profit and needing a profit to obtain the investment hits M/WBEs particularly hard. One African American man in the construction industry described the barriers he has encountered in obtaining financing, which also creates a syndrome that makes it harder for his company to succeed:

[The banks] don't turn you down. They just run you back and forth, back and forth. The end result is that as you go along they say, "Well, this is going to be a problem here." When you get that part out of the way, you spend the money and you go to another thing and they say, "Well, this is the problem here." It's always that you get one thing out of the way and they say, "Well,

we need your — do you have any profit?” I say, “No. You give me some money and I’ll be able to show some profit.” The thing about it is that if I had some money, I could get out there — if I had the financial resources I could really get out there and compete.

Another M/WBE business owner described an obstacle he has experienced in the financial arena this way:

I think it is very difficult when you’re a small business and when you’re under capitalized to start with because you can’t show that you have a substantial amount of capital and profitability in which to get the loan. It’s a “Catch-22” situation.

An African American woman with 11 years in her field described the same situation like this:

Basically [there’s] just nothing out there that gives you a start. [F]or example, to get a line of credit at the bank you need to have money. Well, if I had money I wouldn’t have to come to the bank to get a line of credit.

An African American businessman with 24 years of experience in the procurement field stated that he sees the lack of networking power on the part of African Americans as one of their stumbling blocks in obtaining financing. Without the networking connections, their financial transactions are reduced solely to numbers which is an often impossible situation for small business owners:

I don’t think my situation is any different than any other Black contractor or any other Black business . . . [The banks] took the power away from the local banks and they put you in a computer out in San Jose or out in Dublin or some place and you are just another number in the computer and you don’t have that one on one relationship with a banker like the “Good Old Boys” do. A lot of the big banks don’t want to deal with small businesses and especially Black businesses.

One African American with a supply business stated that her ethnicity has not helped her gain the banks’ confidences. She has worked hard at developing her business, yet believes that the banks operate on stereotypes about African Americans when evaluating her business:

I can almost guarantee you 100 percent that [my ethnicity and gender] affect the banks perceptions of my business. The way that society is, is that if you’re Black you’re not serious. I think gender has a lot to do with [how I’m treated in business], and I think being African American has a lot to do with it. I’m not going to sit here and say . . . it has [not affected me], yes it has.

A Caucasian female who had difficulty obtaining a loan from the bank until she managed to work her accountant's connections stated that, had she been male and known a bank officer, she is certain the process would have been successful much sooner:

If I had a buddy that . . . was the president of a bank and knew me personally and so forth . . . and I was a male, I know I could get a line of credit. But because I don't and I'm not a male, I know I can't get it so I have to go around and come through the back door and play the game. I know I have to do that. The banks are not obligated to do anything for you and that's the sad part of doing business. The sadder part of doing business and doing small business and a minority business is most banks aren't set up to do and deal with small business. Small business is the back bone of the United States.

Without personal connections, minorities and women are disadvantaged when trying to get banks to see past the numbers of a start-up business to their track record, commitment and potential as individuals. One minority woman, after many attempts to obtain a loan, was able to get a "character loan" from a small local bank after carefully compiling documents on herself and her business. Regrettably, these loans are rare and, as she states below, very slow to obtain:

I eventually got a loan from [a small local bank] and at the time I think I ended up getting one that is referred to as a "character loan." I had my credit history but I also was able to provide them with information about my firm such as newspaper articles about us. I have been doing a lot of work in the community because we had a project in [that city] — things like setting up a training program for people in the community — just other things that I just compiled together. I guess they decided they were willing to take a shot at me. Even that took over a year and two different applications working through two different managers.

As illustrated by Section III, Racial and Gender Discrimination, minorities and women are often scapegoated by inspectors, foremen or agency managers who need to pass the buck for the problems that have occurred on their projects. As one Asian businessman explains, this affects M/WBEs' abilities to produce an unblemished track record when applying to financial institutions for assistance:

[S]ometimes if you are working on a contract and something occurs on that contract that doesn't help your business, it's hard to go back to the banks and ask for financing if you come up with another project that is similar in scope to the one that you've done that something happened on. So, I think that is [a] common business occurrence. Financing becomes difficult if projects have something connected to them that didn't go well — things like that. I would say that the problem is more of a financial nature.

An African American contractor explained the negative treatment he received when attempting to obtain financing for his company which, in turn, translates into requests by the bank for higher collateral:

A lot of the banks — when you go in and say you're a contractor or a Black too — one of the first things I've found is that people always come up with a negative attitude toward you and you've got to come up and give them every [piece of collateral possible]. If they can they would try to get you for your mother's own grave. So they get you to try to get that money.

In addition to requests for high levels of collateral, minority business people often find they are charged higher interest rates than majority businesses. A minority contractor in the construction industry stated that, because minorities are historically charged higher interest rates than majority colleagues, it often does not behoove them to try to obtain financial assistance:

[F]inancing is hard to get when you are a minority. If you have a major contract, financing is still hard to get unless you give up a major portion of the job that you just won — which goes into your profit. In my opinion financing a project is really not in the interest of a minority business because if you need \$100,000 to finance a job and you go out and get a loan to cover that the interest on that is going to cover your profit so you're really not making any money. I mean, the good part of it is you get the work experience but you don't really make any money so you can't stay in business.

Even once they were able to obtain loans or credit lines, many of the interviewees in this study stated that another barrier they encountered with financial institutions was receiving only a small portion of the financial assistance requested. One woman explained how, with a company producing gross income of \$1.2 million a year, she was offered only ten thousand dollars in credit rather than the fifty thousand she requested:

The company that I bought was an ongoing business and it's going to require us to keep the line of credit so we can keep doing the size jobs we're doing and then to be shot down and them to say, "Oh no, we'll be willing to give you \$10,000." Well, hello? We just did 1.2 million — \$10,000 is a drop in the bucket — I get one check a day in the mail like that. It's ridiculous.

An African American businessman described his experience with the same situation:

I just put in [the loan application] and explained to them I was a minority . . . They filled it out and it went into San Francisco. That's where they approve all of your papers — Bank of America in San Francisco. Then they came back with [the answer] that I had a \$10,000 loan and a \$2,000 line of credit. There wasn't anything else I could say about it. My request was for \$50,000.

A Hispanic businessman in a professional services industry whose company earns a half million dollars per year, described the difficulty that insufficient financing has caused him. The lack of adequate cash flow has, in the end, decreased his ability to grow:

Specifically, we had difficulty in being able to support . . . one contract because of financing. When you have subcontractors that you have to start worrying about — you're lucky if you get [your money from the City] in 45 - 60 days. So that means that during that time you have to finance a fairly large amount and not being able to support it. Of course, the other thing that could be the source of our problem is when you start paying your people, you pay all of your taxes on time, but since you have a receivable with the government, you're practically financing a large amount because of a bigger staff. They put you in a very difficult cash crunch.

Other M/WBEs described the drastic repercussions that inadequate access to financial capital caused them. As the woman below states, she almost went out of business:

Eventually things got so bad for me that I almost went out of business. I ended up going into bankruptcy and now I'm trying to recover from that. Never did get financing.

B. Bonding and Insurance

Fifty-seven percent of the M/WBEs interviewed for this study experienced barriers in obtaining bonding. Thirty-three percent reported obstacles in attempting to obtain insurance for their business operations.

While insurance problems also affect the successful operation of M/WBE businesses, it is insufficient bonding that proves the major problem for them. Not only are M/WBEs often denied bonding by lending institutions, but they are often charged higher rates for their bonds than majority colleagues and, even once bonding is in place, they encounter demands from public and private agencies for exorbitantly high bonds that they cannot obtain.

A Native American businessman with over ten years experience in the construction field and gross profits of a half million dollars per year explained that, when he started his business, bonding was so impossible to obtain that he had to partner with someone who could get the bonding for him. Then, when that partner left the firm, he automatically paid \$50,000 more for bonding per year:

I could not get bonding and I could not get insurance. They would not give it to me although I handled that for another company for many years. I ran a subsidiary of their company. I had to go into business . . . with another company which, I have to say, the gentlemen did me a real favor. I got the bonding and I got the insurance. We worked together for about three years

. . . [and by] that time I wasn't really faced with a money problem, per se, so then it came to the point that the only thing was being supplied was insurance and bonding. We agreed on a parting of the ways. There was not hard feelings at all . . . [But] when I was with this other person my insurance was in the neighborhood of \$40,000 per year and it jumped up to \$100,000 per year.

One African American with 30 years in the procurement field, a 40 employee company, and \$500,000 profits each year, stated that in his experience high bonding requirements have been used to eliminate unwanted bidders:

That's a process of elimination. That is a true set up to eliminate you from being in the main stream of the . . . industry and it is one of the most racist tools that you can come about. Bonding . . . does not only eliminate Black contractors and minority contractors it also eliminates small contractors — white contractors. Because there is a percentage of people who want to control the industry and they do that through the bonding process. I should say that Blacks [are] always affected by it more than any other contractors from my experience. I've gone around this country and that is the problem throughout the country — bonding.

One woman who has had difficulty obtaining bonding despite a growing business could not find any logical reason for her bonding troubles. A woman who does not like to believe discrimination exists, she could only hope her ethnicity and gender were not at issue, but she could not prove it:

Bonding . . . we have difficulty. There again . . . we are not a small business but we're not a large business either. We can't be certified as a small business due to our gross receipts so we are kind of in this in between type size that, you know, undergoing growing pains . . . there again I don't think the bonding issue really has to do with being a minority — I'm hoping it doesn't. I'm hoping it has to do with the corporation over all and the industry we are in.

In addition to the difficulty of obtaining bonding, M/WBEs reported that they often encounter demands from agencies for high bonding amounts that they are unable to meet. One Asian contractor has encountered difficulties with the high bonding requirement of some Oakland agencies:

I find that the bonding is my biggest obstacle . . . Every job that you've got coming through they want you to give them a bid bond, they want a performance bond and they want a completion bond. I can't afford [them]. I just haven't been able to overcome that hurdle. I've been working out to figure out how I'm going to do it.

Several M/WBEs stated that, even once they had been able to obtain bonding, they encountered obstacles in being able to increase their bonding to meet the demands of the agencies and contractors for whom they were bidding. One M/WBE explained it this way: “[W]e have another bonding company that we worked with for about three years and our main difficulty was trying to increase our bonding.”

As the man above stated, bonding limits in turn limit the growth of M/WBE businesses, which creates a vicious cycle of financial difficulties for them. One minority business person stated:

That is the thing I mentioned — the bonding limit. It is very hard to [bid on] a big job because my company only has a certain limit. Even though it is [within my company's abilities] I cannot bid or I cannot qualify.

A minority female in the construction field stated that, although she has performed much larger jobs, she cannot take some of the smaller jobs that come her way because of her difficulties in obtaining bonding. As she explains below, her frustration is that she can, and has proved she can, perform the work:

I've had jobs that I've done, \$80,000, \$90,000, [where] no bond is required. I go and try and get a little \$25,000 job, a \$40,000 job, [and] they want a bond and then . . . the bonding company [doesn't] want to take a risk on me supposedly, for what reason I don't understand because I've done this other job, which is twice the amount, successfully completed it, [and] they have references, but yet I still can't get this bonding.

A Caucasian woman in the construction industry stated that she has been forced to break up contracts and give some parts away because she could not bond the entire job:

[We have had trouble with bonding] only in terms of the limit. We currently can be bondable to \$250,000. But if I had a larger [contract], which I did have [and] we had to break the contract up. But I do have a limitation.

Minority and women business owners also reported difficulties in obtaining insurance. As the Native American business woman states below, it can be almost impossible for start-up companies to qualify for insurance. And on top of that, agency requests for coverage on jobs are extremely high:

[W]hen I first got a larger contract, they said I needed a million dollars general liability policy. Well, when I went to get it . . . all of the insurance agents that I talked to said, “Well, we're not allowed to issue policies to companies that don't have a prior policy.” There wasn't a whole lot I could do. Like I mentioned, I kept pursuing it and talking to people and I finally hooked up with this “fly by night” guy out in — I think he was in Redwood

City or some place — and he sold me a policy. It wasn't a cheap policy but he sold the dang thing to me and somehow finagled it in.

One Asian business owner in the construction field stated that high insurance requirements by agencies have prevented him from bidding on jobs for which he and his firm were qualified:

One occasion they required two million dollars of liability which we [could] not afford . . . [W]e can accept even up to a million dollars of liability. We can meet those requirements but a project requiring two million dollars is out of our [league] — it doesn't make sense for us to pursue it because even the Civil Engineering Association and Society they have offered the members professional liability coverage but the coverage is only up to a quarter of a million dollars. So how can we go out to [bid] the jobs?

One architect stated that some of the insurance requirements automatically eliminate small firms because they are not in the financial position to carry such high coverage:

[T]he professional liability was so high for such a small project. I think they wanted a million dollars in professional liability and the project was something like \$400,000 in construction costs. The minimum that a lot of architects, smaller architects, carry is like \$250,000. That is pretty standard for a small firm to carry. On smaller projects which a lot of smaller firms are qualified to do — when they tack on a million dollar professional liability it becomes impossible for a small firm to qualify.

Finally, an African American business owner stated that, because his firm is only offered jobs in lower income, minority areas he is not able to earn the higher income that high profit jobs would provide him. This, in turn, affects his ability to purchase the high amounts of insurance that are currently demanded, so he is caught in a vicious financial cycle:

[Other firms] get more money downtown than I get in the ghettos per hour for the jobs. They make more than you do a whole day in the ghetto where you're jumping bullets around the corner. I'm not saying, "Don't take anymore jobs in the ghetto." That's been my bread and butter. But if I had some jobs downtown to replace some of these jobs that I've got out there in the ghetto then I could switch my insurance around.

C. Late Payment

Seventy-six percent of the M/WBE business people surveyed stated that they had experienced late payment from public agencies and private firms. Given the difficulty minority and women businesses face in obtaining financial assistance, late payment can cripple their companies and sometimes force them out of business.

One Native American business owner stated the problem this way:

I've got so much money out there [in receivables and] the jobs are done before I am paid. I've already paid all my help and my insurance and all of the bills and then I wait 60 to 90 days for my money. For a small business, it really impacts you.

One minority business person stated that, with the exception of private individuals, late payment is endemic in his business:

Late payment is almost universal with the exception of single family homeowners [who] pay within 30 days. They are an absolute dream. I am finding, though, that . . . almost all public agencies we work with are all paying [in] a 90 day lag at best. Often it is six months.

Many M/WBEs stated that late payment occurred more often in the public than the private sector. One man stated:

I would say the public sector generally . . . takes a long time to pay you. They're not really late but they take a much longer time to pay you than private companies. Private companies tend to pay you pretty quickly. It will take sometimes three months before a public sector pays you . . . That is sometimes difficult. Especially for a small firm that operates on shorter intervals.

A female business owner with over 30 years' experience in her field stated that, while the private sector tends to keep contractors informed on payment issues, public agencies such as the City of Oakland not only delay, but offer no explanations:

Private industry people will generally tell you what the problem is. When it comes to City jobs, you don't know why the City doesn't pay. You don't find out why. We just got paid from [the prime contractor on a City of Oakland job] because they just got their check last week for their November billing. It was paid just last week [four- and one- half months later].

An Asian contractor with 10 years in the construction field stated, again, that the private sector is more responsive to payment issues than are public agencies:

Private [companies] — If I call and invoke their bill is past due then they will pay. As for the public agency, they have their own system. A lot of times they say 60 days [and] yes, they will try. But I don't see any reason why that will take that long because remember we are a small contractor and for a couple thousand dollars invoice I don't see why it takes 60 days to get paid. Sometimes it's even more.

Another M/WBE described difficulties encountered when dealing with the County of Alameda:

[The County is] famous for late payment. I work with [them] and initially they made it 60 days to get paid. Lately they've gotten the product and it was delivered and it was 30 days and it was going very fast. I called politely and tactfully said, "Is there anything you can do?" Someone got on it and looked it up for me and investigated it. About three days after that it was in the mail and I thought that was very nice. The County is getting better with me because I've done, as far as I'm concerned, a decent amount and they've gotten quite a bit better. With me they have gotten better.

The same business owner went on to describe late payments by local agencies such as the City of Oakland and BART which may have actually driven M/WBE colleagues out of business:

The City's process for processing payment is extraordinarily and excessively unreasonable. A better example of that would be BART. I know for a fact that on the BART job that we worked on — and this would have been about three years ago — the payments typically arrived, on average, seven months after the bills were prepared. In some cases, they took considerably longer than that. I know for a fact that some businesses actually went under as a direct result of the late payments by BART. I also know that personally my business was owed \$25,000 to \$30,000 — possibly more. I don't have that figure. But the amount of money that was owed to me was huge for my business at that time. The fact that I didn't get it really, really stressed my business.

While the business person who recounted the above example did not believe BART or the City of Oakland intentionally withheld payment, there are those M/WBEs who have seen late payment used as a form of manipulation against them. One female owner of a supply business stated that a staff member in BART's Purchasing Department threatened her with retaliation if the WBE did not agree to her payment stipulations:

[T]here was this lady . . . in Purchasing. I give "2 percent 10 - Net 30." It was about the 28th or 29th day. She called me and said, "If I pay this now can I still take the discount?" and I said, "No, it's out of the discount period." She said, "Well, if this goes back in for another 30 days we know how to get rid of vendors we don't like." My account for BART has been assigned to another lady . . . and it is handled very professionally. That other lady is still on BART payroll. AC Transit is worse than terrible for getting paid.

Other M/WBEs described the control prime contractors use with the timing of their payments:

If the general does something that may not set right with you, you have to be careful how you handle it because if you tell HSC, he will withhold your payment as long as he can without getting too much heat put on him. He knows that will choke you out — by not paying. Because if you can't pay your people, you can't perform. That is the typical attitude of many, many general contractors.

Another put it this way:

Most of [the prime contractors] have been fine to work with and exercised some flexibility and understanding. There have been a couple who have been very difficult — almost ruthless — withholding, with any excuse, the monies to compensate for work completed. Not responding to communication. Just being very difficult.

One woman stated that it is prime contractors who don't expect to work with her more than once who really cause problems for her with late payment:

Where you are going to get your problems are your one time prime contractors . . . maybe [on a] one-time project you're doing. They may [think your work is] okay, [but] you don't get paid. Luckily, we have done everything by the book so our loss has been minimal. However, the time it takes to get paid is astronomical.

Because most minorities and women are rarely afforded the opportunity to work as prime contractors, their dependence on primes for payment is continual. One minority businessman describes how prime contractors sometimes go as far as to use a subcontractor's money while withholding payment from them:

Payment is definitely an issue. I find that some companies aren't beyond using your money to finance their operation. In that I mean, typically they make us sign an agreement that they don't have to pay us until they get paid. We don't always know when they get paid and sometimes they get paid in a month or two and they keep telling us that they haven't been paid. Meanwhile, they are using money that they owe us. It's been pretty much a constant aggravation and cost us a lot of money. That's probably one of the biggest problems.

Because late payment is such a common problem for M/WBEs, it can have crippling effects when coupled with the lack of credit or loan financing they experience when starting their businesses. One Hispanic American businessman described a local project which, because of late payment, threatened the security of his business without a credit line to fall back on:

Take the case of the [local municipality] where we had a large subcontract with a prime contractor for [some construction work]. We have to put our

billing on the 26th of the month. Usually we are closing our payroll on the 16th and the end of the month. So that means, that the end of month payroll I cannot even put in on the 26th, I have to put it on the next one. So that sets me back already 30 days on one of my payrolls. On the big bid where we are billing something like \$50,000 a month, I practically have to look around to have financing to finance me for 30 days in order to do that if I don't have a credit line that I can make use of.

A Caucasian female business owner who was fortunate enough to obtain a credit line stated that, given the problem of late payment, she is not sure she could have survived without that financial assistance:

I guess we have been fortunate to have a sufficient line of credit that we've managed despite that problem. But we have had late payments from the City of Oakland; we have had late payments from non-profit clients; when we work as a sub to another firm we have had late payments from them as well.

V. PROBLEMS WITH M/WBE PROGRAMS

A. Certification Difficulties

A total of 76 percent of the M/WBEs surveyed in this study stated that certification procedures pose problems for their firms. Generally, the time involved in obtaining certification and recertification jeopardize minority and women business owners' abilities to get actual contract work done.

One minority contractor stated that certification procedures pose problems for him because the paperwork requirements are so voluminous and must be repeated for each agency with which he works:

[H]ere is one of the problems. Minority systems that they have, everything you do you have to do a binder full of paperwork for every organization. It's just tremendously time consuming. It's the same thing over and over and over again.

One minority contractor stated that the paperwork is difficult enough to do once, but to do it repeatedly for many agencies is impossible. She has given up possible jobs with the City of Oakland because she does not have time to devote to the certification process:

Actually, let me define "too much paperwork." Too much paperwork is okay for one agency. But when every city, every agency, every county, every state agency, every federal agency wants a lot of paperwork and all that documentation, it becomes impossible. I have not bid on jobs because there

is no way I have the time or the energy to prepare another WBE package for the City [of Oakland].

Many M/WBEs echoed the conviction that certification should not have to be as time-consuming, expensive and chaotic as it is. The most common suggestion for improvement is a central clearinghouse that provides certification to all contracting agencies:

I think that the fact that it has to go through and be certified with every Tom, Dick, and Harry business seems to be silly . . . It would be much more efficient if one could go through one or maximum two. One for State work and another one perhaps for Federal work. If you have a certification — I mean it's like a birth certificate. You have a certificate that says you are a particular ethnic group or whatever sex you are.

Another minority business person stated that, given the repetition involved in multiple certifications, it is hard to believe that such a costly process could exist:

[Certification], to me, is a major, major problem in many regards. It is my opinion that there should be one State-operated MBE/WBE agency. Every public agency and every city in the entire State of California should look to that one agency. I personally feel that the fact that every single agency and every single city and the State has staff dedicated to processing these onerous applications and forms is one of the main causes of wasted taxpayer dollars. It's mind boggling that it continues.

Not only is the process expensive for the public, it can also be expensive for M/WBEs. One woman who was certified by CalTrans but rejected by BART has had to spend thousands of dollars to get the situation resolved:

[Certification] just gets completely and totally cumbersome. If you had one agency, i.e., CalTrans or a clearinghouse . . . if you were certified with the clearinghouse, you're certified. We're spending thousands of dollars in minority certifications that is just a duplication of energy. How can I be certified with CalTrans and denied with BART? Does that make sense?

Other M/WBEs have had to spend much time and money getting certified. One minority business person had to hire an attorney in order to get through the certification process:

The problem [with certification came] when I first started my business in 1988; I applied for certification with CalTrans and had a little bit of difficulty getting certified. I had to hire a lawyer — an attorney — and eventually was certified. The woman [from CalTrans] came out and did a site inspection and she just didn't think that I was a bona fide minority woman-owned business. Here I had years of experience in [my field]. I had my own business — my own corporation. Everything was legal and above board. She just — I don't

know — she just didn't like me or . . . I don't know what happened. But anyway, I got an attorney and eventually was certified.

Although another minority business owner was certified with the MBE/WBE Clearinghouse, it was necessary to hire an attorney and spend over \$1,000 to be certified by CalTrans:

The MBE/WBE Clearinghouse — that took a long time [but] it went through. My big problem with certification was CalTrans. I am a 100 percent woman-owned business. CalTrans certification has to be the worst. They have incompetent, arrogant people that should be fired. I had to spend \$1,245 for an attorney to have a hearing for certification.

Many other M/WBEs in this study encountered barriers in the certification process with CalTrans. One African American business owner recounts repeated problems in attempting to become certified with CalTrans:

I'll give you one just getting certified by CalTrans. First of all, I sent all of the paperwork in and fortunately or unfortunately, there was a contractor in Los Angeles that also had the name Wilson. When my paper work went in and then because we were both Black and must of hit CalTrans at the same time, they processed all of the paper work and sent it all back to him. I called them and asked them why. They said, "Because you're married." I said, "We're not married." They said, "Yes, you've both got the same last and name and you're both this and that." I said, "You know, I'm in Oakland and you told me he was in Los Angeles. You sent all of my paper work back to Los Angeles just because two Black people came in at the same time. That doesn't make us married." I had to reprocess all of the paper work all over again.

Okay, when this paper work got down there, I didn't have an ethnicity on there. I told them that I don't have anything to state that I'm Black. They said, "How do we know you're Black?" I said, "I sent you a driver's license, obviously you can see I'm a Black woman." They said, "Well, we have absolutely nothing that says you are Black. What about your birth certificate?" I said, "I was born in [a certain state] and as backwards as it is they did not state your race. They just give you a name when you are born and that is it. I have no ethnicity on that at all. So, I have absolutely nothing besides my drivers license that says I am Black." Do you know that those devils would not process it? I finally ended up — first I fought them because I thought that was ridiculous. Then after a while you have to conform with the system. I had to go to the banker and the banker had to write a letter telling them that I had been doing banking with this business for over ten years and I am a Black woman. That is what they used.

The Clearinghouse did the same old [thing] over there. I went to San Francisco to the Clearinghouse. They came up with the same mess. I said, "You obviously can tell I'm a Black woman. What is your problem?" I had to send a letter over there again. I even had to go down here to Great Western and have the manager write me another letter again to CalTrans and had to go through certification even though I am a Black woman — even though they could see this stuff.

It is clear from these stories that minorities and women spend valuable business time attempting to obtain the certification that should provide them with access to greater contracting opportunities. As one minority contractor stated, certification itself will not provide them with the income to stay in business; contracts come first:

[My M/WBE colleagues] say, "Gee, I've started business and I want to get going. Who should I get certified with first?" I tell them to start with CalTrans and I said don't waste your time on the other ones — you'll spend your entire time filling out paper work. It's more important for you to go out and get business than it is to be certified. That's the truth. Certification isn't going to give you the bucks to keep your doors open. You've got to go out and get the business. If they make the process — one stop certification. We've been fighting this for years.

Some M/WBEs even find that the difficulties with the certification process can jeopardize their participation on project teams. Therefore, not only does it cost money to become certified, a poor certification process can also cost business people valuable contract dollars:

[T]he big problem is having to get certified by every single agency and then the certifications come up at different times and they want volumes of information and it takes a lot of time to track it and to respond to it. The City of Oakland, I personally didn't have a problem [with them] when I got certified; however, I have friends that are minority-owned businesses and they tell me that their certifications have been lost. It's been a really horrendous process for them.

Sometimes it takes a really long time . . . like right now I'm trying to get certified by the City of San Francisco and I've got someone who needs me for a project but, you know, it's taking me months and months to try and resolve the issue and I'm about at my wit's end because I don't want to lose the work so they just move really slowly. It's embarrassing as a taxpayer to see how slow they move.

Finally, some M/WBEs feel that the certification process puts them at a disadvantage compared to majority businesses. First, majority firms do not have to spend the time getting certified and, second, they do not have to make vital details on their business history public. One business owner stated:

There is certainly an awful lot of paperwork to get certified. I always feel uneasy about all of the information that you have to submit that other firms don't have to — I mean, majority firms aren't making it public in the way that we are.

B. Difficulty Obtaining Bid Information

Despite the existence of M/WBE programs, many minority and women business owners find that they are unable to participate in programs set up to aid them because they cannot obtain timely information on bid opportunities from public and private agencies. Sixty-two percent of the M/WBE business owners interviewed stated that they had experienced difficulty obtaining information on bid opportunities within the marketplace. One minority contractor described the situation like this:

One of the things that we regularly do is to call various agencies in the Bay Area to find out if they have projects coming up and to try and get on the list for those projects. Frequently, they will put us on the list but there are other times when they will come out with an RFP and we will hear about it only indirectly so we know that we weren't put on the list . . . [and] sometimes we hear about [jobs] too late.

Another M/WBE business person described one local agency and the difficulties it creates with poor bid notification:

Their procurement process is kind of scattered at the moment. It doesn't necessarily all go through one person so the size of job that I would be likely to get are let by various . . . heads in various departments. So, it is kind of hard to tell who might have work, especially if you don't know who is responsible for letting work . . . Probably just lack of access to information about the jobs [is my biggest problem] . . . So, it's just a problem knowing about the ones you might want to bid on.

It is often the lack of organized and routine methods that pose problems for M/WBEs in obtaining adequate access to bid opportunities. Regrettably, several local agencies do not seem to have bid notification systems in place. One individual stated, “[T]he Redevelopment Agency and the County — those agencies don't seem to have any particular methods set up.”

One minority businesswoman stated that she has experienced a frustrating syndrome with public agencies in attempting to be put on a vendor's list in order to receive bid notices. She describes it as follows: “They send you papers and then you write back to them, but then that's all you hear. You don't get anything.”

A minority contractor in the construction field stated that when he can get proper notification of bid opportunities he is successful, but it is the lack of adequate notification that prevents him from winning projects:

[When] they are willing to mail it to us . . . we have been successful bidding on those projects. Usually the problem with that is that we don't have enough information on other projects to know when to bid — when the projects are up for bid.

An M/WBE contractor echoed the difficulties of obtaining adequate notice of opportunities to bid. After making a concerted effort to obtain notification from several Bay Area agencies he literally came up with nothing:

By and large . . . I function as a subcontractor and I'm generally notified of upcoming projects by a prime. But I have, in the past, tried with public agencies and cities to be put on their bidder list. What I did was I made numerous phone calls to about 15 different Bay Area smaller cities and tried to ascertain what were the right contact names and addresses. I sent each of them a promotional package and I requested that I be placed on lists so that I would receive notification of projects. The result which consisted of several days of effort, netted me zero. It was wasted effort — I have not received a single job notification.

One M/WBE described in excruciating detail the efforts they made to get on the vendor's list at CalTrans in order to obtain bid notices:

I have filled out the vendor list profile umpteen times and given it to . . . the Purchasing Office. I have never, never — oh, once they sent me a bid on a briefcase but I didn't get it. But that was back in 1992 . . . and I know I am on that list. I called the lady at CalTrans . . . and I said, "Would you please do me a favor and find out because I know I've filled out the vendor profile at least two or three times. Can you find out and tell me if I'm still on that list because I've never gotten anything except two or three years ago I was to bid on some briefcase or something. Can you tell me what is going on?"

The randomness of the notification systems in local agencies is confounding to many M/WBEs. Some reported that, although they are on a vendor's list or even occasionally receive bid notices, there are times when their colleagues will receive notices that they do not, with no explanation:

I think after I went through the certification process with the City, I also requested to be put on their RFP list. I get like two mailings on the same RFP. But, as I mentioned, on one project recently I was excluded from the mailing. I heard about the project through one of my other colleagues. It kind of makes me feel like, "Am I missing other mailings that are going out?"

Another minority business person stated that he has missed out on mailings that his colleagues have received. It is through these incidents that he knows the bid notification systems in which he participates do not work.

Finally, one African American woman who owns a supply business stated that she suspects good notification from agencies depends on who you know. Again, M/WBEs are left wondering if their business problems are due to a disadvantageous position in the contracting network. This woman states:

One of the things that I find is that you never hear about what is going on, even though you might get certified and they say they are going to put you on the list. Sometimes I don't expect to hear anything because sometimes you never hear a thing. I think what is going with most of that — and this is my personal feeling — that it's kind of who you know. If you know somebody there and you are on good terms then . . . even if you are providing the same service it doesn't really make a difference because you are like wasting your time. [I]f you try with one Department and they say you do good work then they will refer [you] to someone and they will see you but I never hear when anything is happening. I mean, I see [products] and I say, "Oh, who has done this for you?" and they say, "So and so and so." I'm thinking, "How come I never hear when these things are being bid on when we are on all of those lists?" I am the only Black minority woman [offering] that type [of product]. If we lost because our price was too high I could totally understand that. It is our fault because we bid too high. But for the most part you never hear of these things. [We're] not informed . . . no information.

C. Inadequate Lead Time to Bid

Obtaining bid information from public and private agencies is not the only problem M/WBEs face in attempting to gain contracting opportunities within the marketplace. Sixty-two percent of the interviewees in this study referenced difficulties getting timely and adequate information from prime contractors in order to even have the opportunity to bid for a job.

Many of the M/WBE programs within public agencies require that prime contractors make what is referred to as a "good faith effort" in fulfilling M/WBE participation goals. Prime contractors must show that they made reasonable efforts to contact and gain minority and woman participation on their bids. If they do so, and yet do not find qualified or available M/WBE subcontractors, they may be excused from the participation goals.

Therefore, M/WBEs report that inadequate lead time is one method by which prime contractors technically make a "good faith effort," and yet do not allow M/WBEs a realistic amount of time in which to offer a bid. The syndrome is explained by this contractor in the construction industry:

You will get the paperwork in that [prime contractors] are looking for subcontractors two days before the bid . . . It's happened many times. They know you can't [put a bid together with such short notice], that's why they do that to you. I would venture to say that probably if you looked in their [bid] paperwork, you would find [they had stated] that we were solicited but we didn't respond . . . I've been solicited too many times for jobs that are due the 15th and I get the thing on the 15th on a big . . . CalTrans job or those type of jobs. It says, "Please sign this to respond." You can't be responsive on that because when you are subcontracting on a job like that, it takes weeks and weeks to put this together and get prices. You are going for steel prices, you are going for other prices. There is no way you could respond to this. To me it would seem like they are saying [to public agencies], "Okay, we sent this many solicitations out and we didn't get a response." That's the only reason I would see that I would be getting them in that [short] length of time.

A minority business owner with over 30 years of experience in the construction industry stated that he often gets inadequate lead time to bid jobs from primes; and often, if he looks into their final bid, he will find that they lied about the contact they made to M/WBEs:

I have had people call me two days before a bid open and ask me if I'm going to bid it. I never even heard of the contract. That's two days before and they say, "Are you going to bid on it?" The only place they can get my name is the roll of minority contractors. So, to me, that tells me all they want to . . . do is show they made an attempt to contact you. Now, if you say, "No, we're not going to bid on it," then they go back and say [to the public agency], "Minority not participating. We called him up and we sent him a card but they are not going to participate." They don't tell the [agency] that "We notified them two days ahead of time" and all that. Then you go down there [their paperwork] says, "We didn't have any minority participation." They haven't contacted anybody or they have contacted us two days ahead of time.

An African American woman with a supply business stated that she often receives last-minute requests for bids and then never hears back from the prime contractor:

I have been called a couple of times by individuals who are trying to meet their minority goals. What I have found out is that they did not allocate enough time . . . They would call maybe a day or two of their having to submit their bid and they say, "Can you give us prices now?" I can't remember — I mean I have gotten quite a few and I'm talking about six or so and I can't remember off that number if one has actually followed up with us after we have given them prices; or we will fax them the stuff and we will never hear back from them.

It is often obvious to M/WBE subcontractors when a prime contractor is serious about actually including them on their project or, at the very least, obtaining a viable bid from the

M/WBE. One man explains that it is the follow-up and contact from primes that tells when they really do want a bid versus when they do not:

I know there is [a request for bid] coming in right now from [a large prime contractor] and I won't get a phone call from[them about it]. I know that they are just trying to meet their goals on a couple of things. In other cases, if they are really serious about dealing with us they will get on the phone and call me. So, generally speaking . . . it just kind of varies from job to job and what's on the job . . . In the same respect, some of these [prime contractors] will send these good faith efforts and I'll go pull the plans and there is nothing on it for us so they are not even looking to see if there is anything I can quote and yet they are sending off the request for a quote.

One contractor stated that her company now goes through a roll of fax paper a week on requests for bids from prime contractors; and many of them are not in good faith. As the businessman above explained, it is also possible for this woman to tell which contacts are sincere requests for bids and which are not:

Well, what [the prime contractors] are doing now is that they are sending off the fax notices and they fax to you for their good faith. We are going through a roll of fax paper a week. I'm talking about 300 and some odd linear feet of fax paper that we are going through a week getting requests for quotes. The flood doors have opened forth and we try to cover them but we can't get all of them. I think most of them now have taken care of that by faxing that to you and not having to get it certified in the mail to you. The fax machine has changed the way a lot of these general contractors look at getting out to the minority community in a timely manner — through the fax machine . . . I can pretty much tell which ones are just doing it to meet the good faith and the ones that really work with us and know what we do will call us up on the phone and say, "Gee, are you going to cover this and what about that and can you help me? Can you get this for me?" They will spend some time on the phone with us so we pretty much know which ones are just doing it to do it and which ones are really serious about wanting to do business with us.

An Asian business owner in a professional services field, who cut off the company's fax line so that prime contractors could not abuse it in satisfying their good faith effort, also informed CalTrans of the abuses that were taking place on their contracts, but could not get a response from the staff there:

I've even called to CalTrans and talked to [a staff person there] . . . yes, I've called personally to her to tell her what was going on with me as a company. I even cut off my fax machine now so that I don't get a fax from the "Old Boys" that they are ready to bid and the bid is due tomorrow so that they can't do their good faith efforts, you know . . . like that. I approached her on that and she told me, "Well, I don't handle that." I told her, "Well, I thought that

was your job and you may want to be aware of what they are doing.” I’m sure she is already aware that is what they are doing anyway. But nothing was said to me to my satisfaction to where we could rectify that.

Failure to monitor these types of abuses (prime contractors’ good faith efforts) is a constant problem for M/WBE business owners. One minority business owner with over 30 years in his field stated that, despite this experience, it was still necessary to go through these “fire drills” in order to gain potential business and not lose out:

As a subconsultant, we get calls from large companies, frequently, say on a Monday, that want us on their team and they want all of the information that afternoon because the proposal is due the following day or the day after and we have to Federal Express it to them. We have a lot of fire drills that we’re put through at the last minute. It’s just something we try to deal with [T]he thing is that if we don’t do it, they won’t call us again. It gives them — they could call someone else. I have always scrambled and done whatever I have to do because that is what I figured I needed to do in order to do business with them. They kind of have you over a barrel a little bit so they don’t really worry too much about the inconvenience or the stress that it might cause you. They just want you to respond.

D. Tampering with Bids, Contracts, and Work Scope

During the course of either bidding for or executing a contract, M/WBEs often encounter barriers that limit the growth or jeopardize the stability of their companies. The major barriers reported by M/WBEs in this study are outlined below.

1. Barriers in the Bid Process

In addition to the problem of inadequate time to bid a job, which was outlined above, M/WBEs encounter other barriers during the process of bidding. One of the most common barriers experienced by these M/WBEs was, despite the fact that they often submit the lowest bid on a project, they are not always awarded that bid. The reasons for their rejection are often vague, illogical and inconsistent.

One M/WBE in a professional services field described the difficulty of pinning down prime contractors who have been awarded a contract but may not pass the work along to their M/WBE subs:

Well, I know that on some jobs I’ve gotten word that I was low bidder yet I’ve never gotten the job or yes, they’ve put your name in and it’s going to be a job that’s three years down the line and then when it comes time for it, you never hear back from anybody.

One M/WBE was actually informed that, although their company was the low bidder on a project, the work was being given to someone who had played football with the prime contractor:

I bid the job and the [prime contractor] told me he was going to give it to this guy . . . because he played football with him in high school. I was the low bid on it. As I recall that was a BART job for the expansion of one of the signages for the new stations.

One man who had suspected that his bids were not being honored by one prime contractor, although they were the lowest, tried bidding below cost to see what would happen; he still didn't get the bid. And yet, because of his experience, could not believe that he hadn't been lowest either:

[I]t's the "buddy-buddy" thing. I bid eight different jobs. I went down as low as \$7.00 and still didn't get it. I was just trying something. So . . . they are going to go under you regardless . . . If I bid down to bare bones, how in the heck is this other company coming on to me?

One African American businessman described a situation in which he won a contract through a low bid. However, the agency decided to throw out that bid and redo it. When this same man won the low bid the second time, the agency simply refused to do business with him:

I was low bidder to General Services for a street sweeper, and they threw out all the bids and I had to go back out to bid. I low bidden a second time, they just flat refused to buy from me.

Sometimes M/WBEs find that, although they have won a contract on the lowest bid, they are eliminated in the end because of a technicality. One M/WBE described a situation in which their firm was disqualified because, out of a stack of papers, they were missing one signature:

It was on a CalTrans contract. We had submitted the package and they had an obscure signature required on, I believe it was, one of the HRC forms that was kind of hidden in the middle of the page. We just completely overlooked this one particular form. We had the attached cover letter, had all the signatures every place else . . . everything was signed. We submitted a cover letter that I signed with all of the attachments indicated and we were contacted and told verbally that we had been awarded and then we contacted the party that had notified us, probably about a month and a half later to find out, you know, "What's the status? When is this going to happen?" and we were told that we had been disqualified at that point which was kind of a shock to us. We had no idea that we had been disqualified. We turned around and called the contract administrator or the contract manager who virtually confirmed what had happened and told us in order to protest it, we had to have a letter there by that afternoon . . . Round and about we ended

up being awarded the contract but it took several months. We have just [in March] been able to start work and this started back in August.

It is the inconsistency of the reasons for rejecting their low bids that make many M/WBEs suspicious. This, in the end, allows for no sense of control over the bidding process; if you can be low bidder and still lose the work, then what can you count on? One M/WBE describes his experience with this inconsistency:

We bid and then they already have in mind some other contractor . . . Then they gave us some kind of excuse like . . . I did not submit the bid timely. My price was lower than the other. Then they decide they made a mistake to select the other but they already signed contracts, so the other contractor finished but they paid some of our lost time.

Another area in the bidding process in which M/WBEs find they have inadequate control is in knowing who listed them as a subcontractor. Often M/WBEs find that they are listed on a bid without their permission or knowledge, and even without having offered a quote. One WBE describes a situation in which a prime contractor listed her without her knowledge and won the contract. Although the prime informed her and intended to give her the work, he had not gotten a quote from her and had underbid the project; in the end this woman had to negotiate a fee she had not had the opportunity to bid:

We were being listed as a subcontractor. We participated in the oral presentation — basically teamed the whole bid package with two other consulting companies. After it was all virtually said and done, one of the other parties that was also submitting a bid package called us and said, "We need your emergency response rates." So, I submitted those which are substantially higher than our standard published rates and they were a little taken aback. Come to find out that they had listed us as a subcontractor on their proposal which we didn't really find out about until I received a contract from them in the mail because they were ultimately awarded this contract. I am still actually negotiating this contract. We were just kind of a little taken aback by it. They did not ask us for rates or anything until after the fact. Because of this, our credibility with the company we teamed with on this project was damaged; to put it mildly, they were somewhat perturbed with us. Now we are negotiating rates since they have already submitted.

Often M/WBEs are not informed that their names were used on bids. They sometimes find out through the grapevine that they had been listed on a job and that the work was then given to someone else:

[O]ne of the things that the general contractors don't do is that if you were to call and ask them, "Did you list me? Am I low? Am I going to get anything?" — they are not going to give you any answers. Then once in a while when it does leak out . . . like I found out on one job that I got listed,

[a public agency] told me I got listed but I never got the job. It wasn't that big of a deal. It wasn't a huge job. But if it had been a huge job, I would have been chomping at the bit. Yes, it does happen.

Another barrier encountered by M/WBEs during the bidding process is bid shopping, a situation in which a prime contractor will take a subcontractor's bid and show it to other subcontractors, asking if they can do the job for less. This is referred to as "shopping," because it allows a prime to look around for the best price. An M/WBE in the construction field explains how bids have been shopped to them:

We've had two scenarios where a general contractor would call us, "Can you do [a job] for such and such because so and so is at this [price] so can you do it for a little bit lower and then we'll use you." Another time, actually the general contractor was awarded the contract and he listed us. We were going to be the sub . . . and he was making up this whole story about how he put such a low profitability into the bid and I needed to come down in my . . . bid. After it was awarded to him.

Another M/WBE described a situation in which a local public agency actually shopped a bid to them, letting them know what another subcontractor's bid was and asking if they could come in lower. As this person's experience shows, many people feel that, if they want to develop a relationship in order to receive future work, they must participate in the bid shopping process:

It was a project in [a local city] [where] we had submitted our bid and the [c]ity actually told us, "Hey, this person did this and do you want to change the bid?" Of course we wanted the project, so we did.

One man describes a situation in which he lost a bid, although with five of the bidding prime contractors he had offered the lowest price. But a sixth prime contractor mysteriously came in two hundred dollars less than he did:

There was an instance which I felt was rather blatant. I believe there were six prime contractors who bid a job and five out of six listed me at the price I had quoted. The sixth contractor listed another company for \$200 less. To me it seemed like, if the guy's bid had definitely, genuinely, been \$200 less, all of the other primes would have listed it too. I did inquire from the primes at that point [and] they said, "No," that . . . to their knowledge my bid had definitely been lower except for this one outfit.

Even when M/WBEs know that their bid numbers have been used by a prime who has been awarded the contract, they cannot always be assured that they will receive the work:

I've had a couple of companies get a number from me and actually use the thing and then change and say, "We're going to use somebody else." [They

would] use my name and number on the bid and then change it.

Others find that, after submitting bids to prime contractors, they cannot get a clear answer as to whether their bids were used. Again, the suspicion is that, indeed, their numbers were used but someone else is getting the work:

A lot of times a contractor may call and say, "We want your numbers" and they'll submit their bid and they will be low bid. We will call them and say, "Hey, did you use our numbers?" They will say, "Well . . . I don't know if we did or not." We will say, "Oh, you better not be shopping." So, there again, I don't know.

2. Barriers Encountered With Contracts and Scope of Work

As the section above on bid shopping indicated, often M/WBEs are listed in a bid package and yet, when the time comes to do the work they do not get it. One Asian woman in the procurement field stated that, after discovering that public agencies would not necessarily assist her in correcting the problem, she has learned to look for the signs early on in hopes of preventing these situations:

[Prime contractors] have [put] us on their team, using our good reputation and experience to help them with the team to win the project and then when it comes down to who is going to do the work and make money off of it, they don't necessarily assign us any of the work. [O]ne company did it more than others but it's happened several times. If you go to the agency and complain, then you're labeled as a whiner and they won't do business with you in the future . . . Now I am a little more savvy about not letting them, first off, put me on their team and list me in their proposal until we have clearly defined what my role was going to be. They still don't like to do that, but I just won't deal with them unless they spell it out ahead of time instead of me just going along with what little bone they think they want to throw me.

Other M/WBEs have again experienced a lack of control over the projects for which they have submitted bids. The M/WBE quoted below submitted a bid on a job but did not get the work because the general contractor had given the bid to another subcontractor as well. This was one of the rare situations where this M/WBE subcontractor was accorded some financial recourse for the problem:

We've had that on the two jobs where certain items were deleted and the contract was reduced from the original amount . . . The general had made a mistake and given [a bid] to two subcontractors and then chose one and didn't choose us to do it. In that case, actually, we got some compensation for it.

Some M/WBEs find that, after winning a bid for a certain percentage of a contract, a prime

contractor will reduce their scope of work. Therefore, even if they have helped a prime win a bid by providing a certain portion of the M/WBE goal, this goal may not be adhered to after the contract is won:

There was another project that we were on where . . . when we won the contract everything was agreed upon at a certain percentage. After we got the project, the prime cut back on our contract and they actually reduced our scope to something much lower than was agreed upon in the initial contracting. I believe . . . we were to receive 20% of the project. After we got the project — when we did the final contract for the internal agreements, it turned out that we only had about ten percent . . . Basically, they cut in half our budget.

One minority businessman stated that he has encountered situations in which his firm will be included in a bid as part of the required M/WBE participation and yet, after the bid has been awarded, his firm will be substituted. He describes such a situation below:

[W]ith [a prime contractor] we submitted a cost proposal, and . . . the project architect over there decided to use another [subcontractor] that he had used before, despite the fact that that structural engineer was not involved in the proposal process at all. So we had basically gone through the entire process, we got the job, and they basically substituted us with another . . . firm.

Another minority businessman echoed the problem of reduction in work scope for M/WBEs. He stated that many times the situations seem to indicate that M/WBEs are used during the bidding process to win a contract, and yet in the end are not given all, if any, of their work to perform:

It's like we end up . . . doing next to nothing. [I]t's more like they really just need you for being an MBE-team member, so to say. It appears as if you're going to do a significant amount of work, and by the time everything is over, sometimes you don't even do anything.

Others find that the work scope changes and they are requested to do more work, but in the end their bid award does not increase. Therefore, they do more work for the same amount of money. Again, there is a vagueness about these negotiations and a lack of monitoring by public agencies that causes many M/WBEs to feel they must give in to the pressure and allow their contracts to be changed:

[W]e were working with this firm that is based in Oakland and . . . we had a scope that we had agreed upon early in the project but as we went along it seemed like the scope had changed and we were not aware of it. Consequently, we had to do more work but the budget remained the same . . . It was very vague as to what our scope was. Although we had a contract,

the scope changed mid-way through the contract and we weren't notified of that . . . They kept the budget the same but the scope changed.

One African American woman stated that she sometimes loses work because the prime contractor will not provide her with either enough or adequate information. In these cases, her work slows down and the project is sometimes jeopardized:

There are some jobs that I work on and there's a problem that comes up — you have to send in a request for information. It might be two to three weeks before I get an answer. So . . . my hands are tied until I can get an answer. Sometimes it holds up my portion of the work because I can't just make a decision.

One minority business person stated that the loss of or reduction in work scope can be devastating: "It happens. Not just one time, but it [has] happened a few times. [S]ee, a small company like mine, we strive on the job that is being promised to us, you know."

VI. CITY, REDEVELOPMENT AGENCY AND PORT PROBLEMS

A. The City of Oakland

Seventy-eight percent of the M/WBEs interviewed in this study had worked with or attempted to work with the City of Oakland. Although 16 percent of the M/WBE business owners who had worked with the City reported positive working relationships, the majority discussed barriers that posed a threat to successful experiences, both financially and personally, on City contracts. The issues outlined below represent the major patterns revealed by the interviewees in this study.

1. Certification Problems

The biggest problem for minority and women business owners attempting to do business with the City of Oakland is that of certification. Many M/WBEs reported that the process is unnecessarily long and time-consuming, causing them in some instances to miss out on contracting opportunities because the certification process could not be resolved. In other cases, they reported wasting valuable man-hours attempting to deal with the paperwork involved in the City's certification process.

One M/WBE reported that being certified by the City of Oakland took over a year-and-a-half:

Actually our first communication with [the City regarding certification], I guess, was . . . the file shows May of 1993. We started contacting them in the later part of 1992 and we received our certification [in] December, 1994.

An African American business person stated that the certification process with the City of Oakland has taken over two years and is still not resolved:

I tried to be certified in the City of Oakland. It's been, what, two or three years now. And somebody came here to look at my little office here, and I was told that he was supposed to write up something to send it to me as to what his findings are, but up to now I haven't heard anything.

The female owner of a professional services company stated that her new company's certification was in process for one year, and was not completed until she pushed it through in order to bid a job:

With the City of Oakland, we had to be re-certified once we formed our corporation so we made out an application right away and apparently it languished on somebody's desk and they finally called six months later with questions which we got in answers to and it languished again for another six months. Nobody was pushing it and our ongoing projects didn't seem to matter until we finally had to have put in a proposal or we had to have the certification. Then we had to push to get it out in time. So, something that could have been handled in a routine way, it had to become a crisis before it ever got handled.

The minority owner of a professional services company explained how much valuable time it took just to get the City to renew a certification. After trying for nine months to obtain a renewal, the outcome is still uncertain:

[O]ur certification was due last February. In December we wrote a letter and said, "Our certification is due to expire in February. Please inform us what documents and/or what paperwork is going to be required to fill out to get recertified." We sent that to them six times. The February 6th date came and our certification was now expired. We still hadn't heard from anyone. We started calling, calling, calling and finally got some information. We sent it over to the — there was a job that was out. We had not heard back from that. We needed to know if we had been recertified. We finally got a hold of a guy and he said, "Yes, your stuff is sitting here on my pile. Call me back in ten days and if I haven't gotten to it by then I will pull it." Well, we didn't hear from him and we called him back. He said, "Okay, I will pull it and put it on top of the pile." Three months later he called and said, "Well, I need more information." This is now nine months after we had requested it and what he was looking for was additional tax information which when we started this it was the end of 1993 and now it's into 1994 and he wants to see our tax stuff. Had it been taken care of at the end of 1993, he would have had all the necessary paperwork to process it; but because it is now become 1994, he

wanted additional paperwork. We sent the additional paperwork over and the only thing we got was, "Well, consider yourself recertified but we don't have time to send you out the paperwork." That was it. So, I can't tell you if I am certified or not with them. I would guess at this point, I am not. So, I mean, that is no way to run a business and it is a business and the City is a business and certification is a business.

The Asian owner of a professional services company with 18 years in his field stated that because he has bid many times and never won an award, coupled with the fact that certification is so difficult for his company, he may no longer bid City jobs. In addition, he stated that business owners in his line of work who talk among themselves believe that certification with the City is easy for those who are chosen by City staff:

I know of other businesses — you know, talking with the other companies — they have influenced us in such a manner that it is like — why bother [with the City of Oakland]? That is the overall concern. We get certified and spend a lot of time — it takes a lot of time to get all the documentation put together On top of that the certification takes nine months minimum. I know the City of Oakland — if you are considered eligible for a project as the best person to get the job, I know they will expedite the certification process. But you won't be expedited until they feel you are worth expediting, I guess. With that kind of attitude or that kind of environment, why bother?

Other interviewees echoed the extreme frustration at how long their certification takes and how little communication they get regarding their status. One MBE who applied for certification in 1992, after many vague conversations with various staff members, has yet to hear whether he is actually certified; to this date he has not received any paperwork. Another stated that his certification took one year to complete. The African American owner of a construction firm stated that it took two years for the City to certify her company.

The frustration for many of these business people has been exacerbated by the fact that, even once they obtain the City's certification, the renewal process can be just as difficult, time-consuming and exasperating. A typical story of obtaining and then renewing a certification is as follows:

For the City of Oakland it probably took about five months from the time I requested the packet to the time that they actually issued me the letter. One thing that I did was that I personally went to their office to check on it so one thing that I noticed is that when they were looking for my file that they were always looking in a different place. Actually my file was in transit.

Actually, I went to check on it twice and then when I went to renew it they claimed that they had sent me a letter, and that I had to go through a renewal process but I didn't receive that letter. My renewal was in late November — I think the last day in November. They claimed they sent out a notice to me

in October which I hadn't received. I went down in the middle of November requesting a renewal. I am still waiting for them to process the renewal [as of March].

2. Difficulty Obtaining Bid Information

For minorities and women the barriers to contracting with the City do not stop once the certification process is complete. Many of the M/WBEs interviewed for this study stated that they encountered many difficulties in attempting to obtain bid information from the City.

An MBE was informed by City staff that he was on the vendor's list and would be contacted about appropriate jobs for which he could bid. To date he has not heard a thing from the City:

We were told that they will use the vendor's list that the City has developed. They will use the list to contact the qualified firms for smaller projects. I don't know how big the list is. I don't know how many people are on the list. But I have not received one single phone call from them.

A WBE in the construction industry stated that in 1992 she submitted a form requesting that her company receive notification of bids in her field. To date she has not received a thing. This is not an uncommon experience among M/WBEs:

We submitted in October of 1992 to be on their [bid list] — in fact, I can give you the exact name of the form we submitted. We have never received a bid package from the City of Oakland.

An African American in the construction field stated that it has taken ten years of effort to win a contract with the City. Although the Port automatically sends out bid notices, it has been a constant struggle to obtain them from the City of Oakland:

The Port is fairly good in sending out notices of . . . projects that are coming out for bids. Normally what happens is they . . . send out notifications of upcoming projects, and I haven't been able to secure this listing [from the City]. With the City, I mean it's taken me from '85 to '95 to get my first job directly with the City.

Other M/WBEs recounted similar situations: providing information to the City and being told bid notification would be automatic. Many of them have heard nothing. One Asian business owner stated, "With the City of Oakland we did have our name down but we haven't received anything."

Another man described the efforts he must make to learn about bid opportunities with the City. First he must check the newspaper, then a bulletin board at the City offices; there is no bid notification system, although other cities in the area have them:

So, one, it's almost mandatory that you have to subscribe to the City of Oakland newspaper. The other way for you to try to find out what is being bid out is to go to their office in the City of Oakland and look at their bulletin board about things that are being bid out, unlike some of the cities, where you are listed in the directory as an MBE or consultant you automatically get a listing.

One Asian businesswoman expressed her frustration at the lack of organization on the City's part when it comes to bid notification:

Oakland is so fragmented that it is unbelievable. You've got the Public Works and then you've got the Redevelopment Agency and then you've got the Purchasing. It is so fragmented, they could have a thousand lists and you won't even know about it. I'm sure that there is some work going on now in the City of Oakland. I have not even seen a bid notice from the City of Oakland, Public Works, or any of them in the last year.

Others stated that they were eager to bid on projects for the City, eager to develop a relationship, but could not even answer the question of when jobs in their category were up for bid. One woman asked, "When are [jobs in my field] available? When does my category open up and where to go when it does open up?" Another man who still had questions about how to receive prompt bid notices explained that he had made several attempts to get on the proper list, to no avail:

[I've had] a lot of difficulty obtaining bid information. And difficulty even if it's just information on where jobs are sent out on a regular basis without a contract — just trying to find out who is responsible for vending the work . . . I filled out the vendor profile three times for the City of Oakland . . . The first time I filled it out, I have no idea what happened. The second time it came back and I made some corrections and I sent in a second profile and we were . . . for some reason those corrections did not get included with the rest of our profile and we were just listed under a few categories where I had made the corrections. Then I sent it in a third time. I sent at least three and possibly four times that I sent in a profile. I think it is all corrected now.

3. Barriers Posed by City Staff

Given their experiences with City staff in various departments and at various levels, many of the M/WBEs experienced negative attitudes toward them and the MBE program. Several M/WBEs perceived that they were not working in a climate favorable to their efforts and goals. What follows are some examples of those experiences.

An Oakland-based African American man stated that after 25 years in business, and experience with many local cities, he finds Oakland to be less cooperative to him and the African American community than other Bay Area cities. He states:

[As one of] the local Black contractors who have been in Oakland here for 40 some years and have been in business going on 25 years, I don't feel people in high places in the City of Oakland are sensitive to the local minority businesses — especially Black businesses. I think the head of the Public Works does everything they possibly can to keep Black contractors out of the main stream of activity with the City of Oakland. I am not just saying that — I've heard it from many Black contractors. Over the period of years than I have been in business, I guess I have done less work in the City of Oakland than I have in any other area. Although I live here and I employ people and I bring the money back to circulate in the City, I find that other cities are more kind and more sensitive to working with me based on my expertise and track record than the City of Oakland. I think the reason behind it is that we have the racism, we have people down there who have been used to working one system — comfortable. I think the people are lazy. They don't want to get out there and bring new people aboard. I don't think there is a real effort put on trying to incorporate local Blacks.

One minority engineer stated that staff people within the City's Public Works Department are known to accept bribes in exchange for contracts. And, he states, those firms that try to compete with the favored firms may find themselves up against fierce opposition from City staff:

[U]nfortunately what happens is that there are people in the Public Works department who live better than their salaries indicate and they do that as a result of certain people being awarded contracts consistently . . . and if anybody interferes or tries to compete with them, they get destroyed by the City.

Another African American with over 30 years' experience in professional services in the local arena stated that, although it's difficult to articulate, his perception from experience is that the City of Oakland does not want to work with the African American community:

It's hard to qualify . . . Sometimes you have a sense that [this attitude] may be a deterrent but it's hard to qualify. It's hard to say specifically. I have a sense that sometimes there are some people working for the City who would prefer that [African Americans] weren't applying for work with the City.

One minority contractor stated that specific individuals on the City staff are known to oppose African American participation in City contracts. Many are known to take care of their friends:

[W]hat happens is [public agencies] pass policies and the staff people say, "I don't have to implement that policy, I'm going to take care of my friend." Then [there's] the guy over at Oakland . . . who's a disaster. He's anti-Black, so he does everything he can to destroy Black contractors.

A Caucasian WBE stated that the City of Oakland does not seem to understand the business needs of either small or minority businesses. If the City were sensitive to these concerns, she states, then the programs would be better tailored to actual needs:

I think that the whole issue is the bidding system and prevailing wage rates and paperwork and the City not understanding what a small business is really all about . . . There is a lack of understanding about what it takes to survive and be successful. There are a lot of programs out there that want to help, but sometimes in some areas do more harm than good. I just think those things need to be worked out and some changes need to be made. [City of Oakland staff] certainly don't care then because they put a lot of unnecessary burdens on small businesses. In terms of involving minorities and setting up programs for minorities and women and then not providing the support systems that are necessary is what I have been encountering also.

An MBE echoed the experience that City of Oakland staff are not sensitive to minority issues:

I think that . . . the personnel who head departments, are not sensitive to the minority community. They have got their own they belong to . . . you know. Unless you pinpoint them or one of their constituents and hang out with them — it's about the only way you can do it. They don't put any pressure on the outside contractors that are coming into the City to do the jobs. They just kind of overlook [a bid] — and say, "Well, it's to meet the goals." I think that is one of their biggest fantasies — to meet the goals.

This man went on to describe several incidents in which the meeting of goals was avoided by prime contractors with no monitoring by the City. Therefore, in his experience, the meeting of goals is in word only and not in deed.

Several M/WBEs stated that experience has shown that City staff can be fickle and a company's success can depend on whether a person in the controlling position is favorably disposed to you. One African American contractor stated that he has observed on numerous occasions that city staff have, due to personal likes and dislikes, actually forced some companies out of business. Because of this he has stopped doing business with the City: "I would like to see some changes in personnel before I go back and do work for the City of Oakland."

Another business person stated that because of a change in one department's personnel she has been unable to win bids that in the past were awarded to her company. Although she knows that her prices and products are competitive, she can no longer get any response from that department:

[T]here's one department that I used to do business with. I dealt very well with her — I can't recall her name, she was so sweet — and she got transferred to

another department and she was no longer over there. She, of course, introduced me to the new person and takes me over and says, "This is who we did business with for this and that . . . " and as soon as the new person was changed over I never got another piece of business from that department. I know the department has done a lot of other things. It's not about price because I know I can compete competitively. But it never, ever came back to me. I made attempts after that lady was transferred out of that department. I've made attempts — I've even gone up there and dropped off calendars and brought little gifts and said, "We're still interested in your business" and it just doesn't fly. I can't figure out what it is.

One MBE in the engineering field described the difficulties he has had getting cooperation from City employees in attempting to bid for City jobs:

[T]hat's a personal problem that I had with the City of Oakland. There were a couple of projects, that they sent out to bid or they sent out a request for a proposal and I went to the City to ask for more information about these projects just to get a better idea what they required on these projects. I just found it very difficult to get any information from the City staff. It seemed that they were very uncooperative. I can't really say what the reason was but I found it difficult to get some basic information about the projects.

Another MBE stated that by comparison to the Port, his experiences with the City had been negative at best. Because of difficult employees, the work he has done for the City has been unpleasant and costly for him:

The attitude that we get in every form of communication from the City of Oakland is extremely negative. The tone in the language in the cover letters of the RFPs, the tone in the pre-proposals, the tone in the attitude during the negotiations, is very negative. They don't trust us for anything — we have to grovel and beg . . . we have to meet their requirements to the absolute letter of the law or we will be slapped down. That is the message that is coming through. By contrast, the message that we get, for example, from the Port of Oakland is 180 degrees apart. [At the] Port of Oakland, [an employee] will actually take it upon herself to call me up and say, "We've got this project coming up, I think maybe it will be good for you. Is it something you're interested in? I will make a point of putting your name on a list to the primes as to someone we think maybe they should work with." It's so positive. It's so helpful. With the City of Oakland — sometimes it feels that they're doing everything they possibly can to make our jobs as painful, difficult and costly as they can, and they're succeeding.

One African American contractor described his hopes for a new attitude on the part of City officials toward minorities. As he states below, it is not favors that M/WBEs want, but simply an opportunity equal to that of their majority colleagues:

Those kinds of instances are the ones that the City should take a serious look at and recognize that in an interest to do business with minority contractors — if that is their interest — we are not asking for a favor and we are not asking for a hand out — we are just asking to be given an opportunity to be put on the same playing field that everybody else plays on. [We need the City to reflect] on how you approach a problem on a construction site the same with a minority as you do with a majority contractor.

4. Breaches in Monitoring the MBE Program

There were many reports by M/WBEs of barriers posed within the MBE program itself. The major problem involved the falsifying of good faith efforts by prime contractors, including providing inadequate lead time for M/WBEs to bid, lying about obtaining bids from M/WBEs, and altering contract agreements after a bid award.

One African American woman reported that a prime contractor actually lied to City officials about contacting her for a bid, even after those officials had specifically requested that the prime make the contact with her. Although she was able to expose the fraud to the City, this woman was never awarded any part of the contract and does not know what transpired with it:

The City of Oakland mentioned to that prime contractor that they did have a minority contractor that had bid on that job . . . and would they please contact that contractor, meaning us, to see if they could get a bid from us because we were a minority contractor. The prime contractor told the City that they had already contacted us and that, no, we could not do the work because we couldn't match the numbers. That was a lie. It was just an out and out lie because the prime contractor never contacted us. What's happening is that because the City is enforcing their local minority participation — you know, the White Corporate America doesn't like that. They'll try anything they can do not to try to comply . . . [W]e did not end up on that project. Actually I don't know what happened, who ended up on that project. I didn't really pursue it any further because we had other projects that we were bidding and so we kind of let that go.

Other methods that prime contractors utilize for evading the M/WBE goal, according to interviewees in this study, is late notice of bidding opportunities. As the MBE below describes, prime contractors often notify M/WBEs at the last minute of their need for a bid. In doing so they can officially say they contacted M/WBE companies and did not receive any bids:

We get lots of letters at the last minute saying, "Do you want to bid this?" We get a 24-hour notice on it and they are getting ready to go out and bid. You need enough time to be notified to bid on a project and you need specs. You need communication with the contractor. If they solicit you to bid with

them, you need to know the quantities they want you to bid — the quantities of the items they want you to bid. You need to have that open communication if they really seriously want you to bid with them. They will send you out a notice and say, "Will you bid this project?" and you don't even know what they are asking you to bid. That's the area I am finding is very difficult to . . . work with the contractors on. I would like to see a better line of communication and someone in a position has some concern about the small businesses in the City of Oakland.

Even after an M/WBE firm may have been awarded a subcontract as part of a project team, they cannot be guaranteed that the contract will be signed or the work will come through. Take the example of an M/WBE subcontractor who was sent a subcontract by a prime contractor who wanted to make the subcontractor responsible for items that were not in the original bid:

They sent us over a subcontractor's purchase order agreement and it really doesn't fit and I started reading this purchase order agreement and it was tying me to all kinds of things that if [the prime contractor] screws up, I end up paying for it. I said, "I'm not going to answer to a contract like that." It's like well, gee, you should be willing to do business with us because this is [a big company] and this is the City of Oakland and we are trying to drag you in and get you these jobs. I said, "It's important for me to get the jobs and it's important for me to complete the jobs in a timely manner and get paid and not get hung up with all of these conditions . . ." They are trying to take advantage. They think you're stupid and they are going to take advantage of you and that you are not going to sit and read your contracts. There are cases where the print is so fine and I have bad eye sight as it is.

Even after the City awards a contract, M/WBEs cannot be assured that they will receive the work they have been awarded. An African American woman was awarded a subcontract as part of a project team and after the award she was informed that there was no work for her. Knowing that the prime contractor had won the award because he had provided the appropriate M/WBE participation, she refused to let him off the hook and insisted that he find work for her. To date the conflict is unresolved:

I find that these "Old Boys" are really trying to push me out of the job. They came to me — two of them did — and approached me because I was a Black woman and a woman to meet their quota — I knew what it was but went ahead and did the job anyway . . . I got the job. One of them got the job solely on [the M/WBE participation]. They decide, "Oh, gee, there isn't any work for you . . . I'm sorry." I was supposed to have gone away. I told them, "You used me — you are going to pay me. I'm going to do some work and you're going to pay me." They were saying, "You know, the scope of work that we were going to have you do just isn't there." I said, "Well did your dollars blow away? So you could find something for me to do, I know." I

actually had to call the compliance officers myself and set these meetings up. I told them — and they got helpful after a while — I said, “Look, I’m not going to go away. This job was promised to me and I’m not saying just give me the money but you all need to find something for me to do to earn the money.”

A female supplier has had more than one experience of being listed on a bid which was awarded and then never receiving any work. The following story is one example:

[A prime contractor] listed me to do a lot of [a certain supply]. Never, did I get an order . . . I bid and bid and bid them . . . [The prime contractor] kept telling me they were going to send me an order. I was listed on there. I have never even received an order. I understand that they did the work themselves even though I was listed on there.

Finally, one MBE experienced repeated evasions on the part of prime contractors to his participating in a bid with them. From requiring bonds to giving inadequate notice of bid opportunities to lying about receiving his bid. As he states below, five times out of ten a prime contractor will not respond to his attempt to bid with them:

After I got my bond then nobody wanted to give me [any] work. At first they would say, “Well, we can’t give it to you because you don’t have a bond.” These are generals. So then they say, “Okay, I’ll give you a bid.” The next thing you know they would say at the time of bid opening, “We can’t give you the bid because you don’t have a bond.” A bunch of junk. Some would say, “Well, they are shopping the bid so turn your bid in ten minutes before the bid opens.” Then they would come up with, “We didn’t get your bid on time.” Everybody will tell you to get it in that way, you know, as close as you can. Then they would say, “You got your bid in too late and we weren’t in the office.” All these people are doing is running you to death . . . So after a while it got to the point, really — I still bid on stuff but I don’t go out actively for any bids unless it’s with someone I know because I found that . . . half of the times out of ten — you’re not going to get it. They are not going to call you back.

5. Financial Barriers

As has been indicated in other sections of this report, financial problems experienced by M/WBEs are often acute. This occurs given the fact that M/WBEs experience many barriers which, compounded, cause a more severe problem. The M/WBEs in this study noted two major financial issues encountered when contracting with the City of Oakland that pose barriers to their business development: late payment and high bonding requirements.

Reported instances of late payment by the City were high. Many M/WBEs referenced the complicated paperwork and bureaucracy within the City as a possible cause but, nonetheless,

payment is continually slow, often ninety days. One contractor explained that such delays in payment are making bankruptcy a very real threat:

With all of our contracts with public works . . . it takes a minimum of 45 days to get these payments and usually it's closer to 60 or 90. This is the most awful problem that happens. We face bankruptcy. We are on the edge bankruptcy every day because of that, because I can't make my payroll or pay my suppliers within 30 days when I am supposed to pay them. They end up waiting 90 days and sometimes my staff has to wait to get paid.

One minority business owner stated that he has learned to accept the delay in payment because it is continual. As he states below, it seems to be due to bureaucracy or inefficiency:

Yes, they have a set of channels that you go through and I suspect that papers may lay on somebody's desk until you needle them about it and then they're taken off of that desk and then they are circulated through all of the channels before you get paid. It's not the fastest thing — the City — but they do pay you eventually.

Other M/WBEs experience late payment from the prime contractors for whom they work as subcontractors. Some cannot get answers from their prime contractors and can only suspect what is occurring. One woman states: "[T]he pay has been very slow. I think they are just holding money and they should be paying us."

Others echo this lack of control over their finances when dealing with prime contractors. One Asian businessman explained his experience of late payment on City projects:

I do not have any projects where I deal directly with the City of Oakland but I do work on the project as a sub and we are told that [the prime contractor] has not received the payment so that they cannot pay me.

In addition to late payment, many M/WBEs reported problems with bonding on City projects. The most common problem mentioned was the high amount of bonding required for City projects. As the minority business person states below, Oakland often requires more bonding than other local agencies:

I think that compared to other agencies they require a lot of bonding. [F]or a small project they still require bonding and other [agencies] . . . for a project under \$25,000 don't require bonding, but the City of Oakland does.

An African American business woman in the procurement field stated that on one job she was attempting to bid, the City required such a high bond amount that she was forced to withdraw her bid. Her assessment of the situation is that City officials were using the high bond amount to exclude certain companies:

[T]he City of Oakland had discussed with me a contract that was coming out to bid, but they went on to elaborate that they were asking for so many million dollars worth of money for bonding and all of this had to be done. They were actually discouraging me so we just said, "Forget it." It's impossible for a small business my size to have a million dollars worth of bonding. I have a million dollars worth of insurance but, you know, they were asking for this tremendous amount of bonding and insurance and stuff that had to be done with contract and this was crazy. I just felt that they were trying to discourage me from bidding.

Another minority businessperson stated that, while he could provide the bond amount the City required on a certain job, he was unable to fulfill the extremely high insurance requirement. He, again, perceives that some City officials have used these requirements to eliminate M/WBE businesses:

[T]hey had these tremendous amounts of insurance and tremendous bonds and they told me I couldn't meet them. I could meet the bond. I think the insurance was about \$5 million. I've got about a million dollars worth of insurance right now. It wouldn't take that much to get \$5 million. It's really hard and sad to say that we're impositions on the City of Oakland. That's all it is . . . They don't try to help small and minority businesses. Then they tell you that they are helping the small and minority businesses and they're not. They are discouraging them.

The lack of assistance and support for M/WBE businesses experienced by the individuals referenced above was also experienced by a man who was attempting to use a City program to obtain bonding. Although the City had supposedly established relationships with bonding companies that would work with M/WBEs on City projects, when this man contacted one of the companies he found that it was not a proper bonding company. In his experience, this was another instance of the City not properly supporting M/WBEs through efficient administration of its programs:

The major problem that I had is that last year the City of Oakland asked us to get money for one project. They had a listing of bonding companies that were supposed to help minority companies. We contacted them and they turned out to be a bogus company and we ended up suing them. We won a claim for \$900,000 but actually they just took off with the money. My problem with the City is that they had a list of bonding companies for minorities and they didn't bother checking whether they were legitimate or not. I was actually planning to maybe sue the City of Oakland for false information from these companies but my Dad was actually against that.

B. The Oakland Redevelopment Agency

Of the City, the Port and the Redevelopment Agency, the smallest percentage of this study's interviewees — 32 percent — worked for the Redevelopment Agency. Most M/WBEs who had not done work with the Redevelopment Agency were not aware of the contracting opportunities it offered. After being asked about the Redevelopment Agency, M/WBEs who had no contact with them provided the following kinds of responses: "The Redevelopment Agency — we're not involved with that so . . . there isn't a problem," or "I have no problems with the Redevelopment Agency because I have not had any dealings with them."

Others who had not yet worked with the Redevelopment Agency stated that they had not been aware that the Agency was a separate entity from the City:

I have never approached them and maybe it has to do with my being ignorant of the fact that they were a total separate entity of the City of Oakland. I probably would have seen them a long time ago.

Still others were aware of the Redevelopment Agency but simply had not yet undertaken the outreach necessary to find out about opportunities with the Agency:

That is one [public agency] that I haven't reached out to. I have done no outreach with them at all . . . I am going to start doing some outreach with them and see where I can participate on contracts with them.

For those M/WBEs who had undertaken work with the Redevelopment Agency, major issues included difficulty in obtaining information on bid opportunities, and a lack of monitoring of the affirmative action program once a bid had been awarded. Details on those issues are outlined below.

1. Difficulty Obtaining Bid Information

Several M/WBEs in this study had attempted to do business with the Redevelopment Agency to no avail. The most common reason for this problem was an inability to obtain information on bid opportunities. One person put it succinctly: "We have written letters to the Redevelopment Agency and asked for notification for bids and so forth and so on, but I haven't gotten information."

One business owner who had not done any work with the Redevelopment Agency had just, for the first time in three years, received a package from the City and the Redevelopment Agency on a certain M/WBE program:

I think the day you and I spoke, here in the mail comes a package from the City of Oakland and it's the City of Oakland and the Redevelopment Agency Professional Services contract program which gives information on the program. Basically what this is about is that the prime must show that they are using local and MBEs and WBEs. It's fairly detailed as to what's required. Now . . . it would be very helpful to receive a list of the primes so one could contact the primes and obtain some of the sub work that they will need to have done and where they have to show compliance.

One minority business person stated that they have continual difficulties getting information from the Redevelopment Agency on bid opportunities. Because neither mail nor phone contacts produce the adequate information, they must physically go to the Agency's offices to obtain information:

Yes, I do have difficulty. We have to go to the Redevelopment Agency and keep going out there and find out what do they have available because we are not informed either by mail or by phone calls. So we have to go out there to see the prospective project.

One female business owner stated that, although she has tried to obtain information on bid opportunities with the Agency, she has received no word from them. A male business owner down the hall from her, however, receives ample notice from the Agency. Her interpretation of this situation is that, apparently, she is not inside the Agency's "buddy system":

[The] only thing I can earmark on the Redevelopment Agency is that I'm not getting any work. I'm listed. They came out — I remember going to a meeting and they came out [say]ing that they didn't have subcontractors to do this and to do that. I gave them the listing and the insurance and everything — I've never ever been called to go bid a job in the last year or so. I know they've got some work out there. The guy down the hall from me, he gets all of the work that he wants but he's male. I've never been called on any of those jobs so I'm not sure how it is done. Again, I'm going back to [job] inspectors. Those people who go out and inspect the job and write up the job descriptions . . . for the Redevelopment money, those have got to be the people that are earmarking the contractors to go and do their work. I'm not one of their buddies, I guess.

2. Barriers Encountered Inside the MBE Program

Those who have obtained contracts with the Redevelopment Agency stated that their major problems involved the lack of support provided by the Agency's affirmative action program. The most common problem was an inability of M/WBEs to protect the contracts they were awarded for their participation in the Agency's M/WBE goals.

One M/WBE subcontractor described an experience in which the prime contractor's award was increased, but their own award was not increased:

But with that instance we were subcontracted by another company to do the work. When we got in there, we interviewed and after we negotiated a fee, the scope of work increased; the construction dollars and amounts likewise — increased. Normally, fees should be increased as well. We were denied any increase on that.

Another minority contractor described a pattern in which they are pressured to reduce their fees to the percentage of the M/WBE participation on the contract rather than providing a realistic estimate for the services they are to provide:

Actually, the best example of that problem is with the Oakland Housing Authority. It's partly reduction in scope of work Very recently I received a standard contract from Oakland Housing Authority which described the required scope of services and I initially did a fee proposal, fair and square, that matched that scope. When I was done the fee was \$15,000. I called that in to the prime and I said, "For this scope this is what it costs." Their answer was, "We don't have that kind of money. All we can afford to pay you is \$5,000." I'm not exaggerating. It was a third of what it would cost. I went through a brutal process of paring back and saying, "I can't do two-thirds of the work. If you can somehow find a way for me not to have to do that portion of the work then, yes, I can do what's left for the money you've got." That process of having to pare back the scope to match the fee is becoming universal I'm finding. On almost every job we're having to do that.

Others described situations in which prime contractors could do anything they wanted without monitoring from affirmative action staff. One individual described the retaliation he experienced from a prime for protesting the lack of minority participation on Agency jobs:

I really haven't done that much with the Redevelopment Agency. I have had a little hit and miss but I haven't really had that much success with the Redevelopment [Agency] . . . [because] we raised a lot of hell when [a prime contractor] was down there [at the Agency] about the lack of minority participation and I think [that prime contractor] more or less blackballed me from doing any work down there because of some of the issues we raised on their lack of minority participation.

Another MBE stated that, despite encouragement from Agency staff to bid on certain jobs, it has been impossible to compete with large prime contractors who have more resources at their disposal. There are no provisions within the Agency's affirmative action program to assist smaller M/WBE firms in competing with larger, older majority firms:

Here's another case in point with the Oakland [Redevelopment Agency]. We went after six projects that they had. We have been highly encouraged by the

managers and director of [an Agency] department. The six projects were \$1 million to \$1.3 million dollar projects each — federally-funded projects for comprehensive redevelopment. They basically encouraged us to place a bid for it. We did. We spent two to three weeks putting the information together — my partner and I. We spent \$600 or \$700 just for printing and photographs. We were short-listed on one project and we were last on the short-list They know we are qualified [but] the larger firms got it. We heard a rumor that one company got two of those projects, one of which was a \$22 million project. The second project that they secured was another \$1.3 million project. We can't contend with that. We will go belly-up. They tell us it is a joint venture. That's fine. Have you ever had a small fish talk to a big fish? Never happens. Because what happens is the big fish eats the little fish.

C. The Port of Oakland

Forty-nine percent of the M/WBEs in this study had experience with the Port of Oakland, a much smaller number than with the City of Oakland. The reasons for this lower percentage will be discussed in the sections below. Approximately 17 percent reported positive experiences with the Port. One example of this positive experience is as follows: "With the Port of Oakland, I have had no problems whatsoever. I mean they are very cognizant of what is going on. I have no problems with the Port of Oakland."

The remaining 83 percent of the interviewees who had contact with the Port, however, outlined barriers encountered when attempting to conduct business with the Port. The major barriers included difficulty obtaining notification of bid opportunities, difficulty with Port staff members, and a lack of monitoring of the MBE program. These barriers are outlined below.

1. Difficulty Obtaining Bid Notification

For many of the M/WBEs attempting to conduct business with the Port, obtaining prompt and accurate notification of bidding opportunities was a constant problem. Several minorities and women reported that they made contact with the Port, certified their companies with the Port, or attempted to be put on a bid notification list, and then received no notification in the ensuing months and years. One African American who has owned a construction firm for over ten years stated:

I haven't gotten any bid notifications on any work [from the Port]. I have sent information to the Port of Oakland that we are a local minority contractor in the City of Oakland, but I haven't really gotten any response so I haven't really heard of any jobs that the Port of Oakland has been doing. I'm not saying that they're not doing it, I'm just saying that [my company] hasn't been aware of that. Although, as I stated earlier, we have notified the Port of

Oakland that we do exist and we are a reliable company here in the City of Oakland.

A minority business owner with over 30 years in the construction field stated that, although he has attempted to obtain bid notices from both the Port and specifically the Airport, he hasn't received a thing:

The Port of Oakland, for instance, I bought that [bid list] one year before they had this last bid. I was qualified with everything. I never even got a bid sheet. The Airport . . . I didn't even get a bid sheet on that.

One minority businesswoman stated that, although she has been certified with the Port for five years, she has only been notified of one bid opportunity:

[W]e have been certified with the Port of Oakland for now about five years. Up until this very moment we have only bid on or even had opportunity to bid on one contract.

One Asian businessperson stated that, although bid notices are made public by the City of Oakland, the Port has not made any bid notifications:

From the City . . . they send out to public notice. I've seen them in the paper and they send me a letter that they are requesting RFPs. They give plenty of lead time. The Port of Oakland, they don't send out any bid notices that I am aware of.

Another person stated that, although their company is on the Port's database, no opportunities are made available to them:

I'm on their database and, like I say, nothing on contract [opportunities has come through] . . . Who I would like to sell with is the Airport but getting through to them is nothing.

Yet another minority contractor stated that he does not get adequate lead time to bid for Port jobs. This is because prime contractors who are soliciting his bid as a subcontractor for Port projects simply do not give him adequate notice of upcoming bids. As was discussed in an earlier section, this is often a method employed by prime contractors to avoid their required "good faith effort":

They send me a certified letter at the last minute and okay, now they've got it proven, they solicited this company, but [they got] no response . . . I have [experienced this] from some general contractors soliciting me at the last minute regarding projects that the Port have out to bid. This is ongoing.

2. Barriers Encountered with Port Staff

Several M/WBEs stated that their experience has shown that Port staff often have selected companies with whom they want to do business, which in their opinion, may explain why there is inadequate bid notification for some contracts. Sometimes a company has been selected prior to the bid notification. One minority businessperson in a professional services capacity stated:

The Port of Oakland . . . is more political than the City of Oakland. They have [certain companies] that everybody [at the Port] deals with and the [companies] all have certain firms that they work with. They don't stray from it. They are very conservative in that way . . . [T]his is something that I know from talking with the certain people in certain firms that have work and from firms that do not have work. Also I have talked to a couple of people who are in the Port of Oakland . . . [F]or another firm to break in — it is very, very difficult.

More than one interviewee in this study reported that his/her experience has shown that there is sometimes disparate treatment of majority versus minority contractors by Port staff. One minority put it this way:

There again, the Port has a different criteria how they gauge minority contractors as majority contractors. That seems to be typical . . . As I indicated earlier, it is the Port's attitude that once they have given a contract to a majority contractor, they kind of leave the responsibility to the contractor to make sure all things are carried out properly whereas someone from the Port should be constantly monitoring how minority contractors are being handled throughout the duration of the project. That's the only way you can get a real sense as to what is going on in the field. To ask a contractor or a subcontractor at the end of a project, "How did things go for you?" — I don't think that's monitoring. Monitoring is a consistent thing and that's not happening with Port projects.

Another minority contractor described a situation in which inspectors on a Port job treated her much differently than they did the majority subcontractors on the site. Difficulty with inspectors on Port jobs came up more than once during these interviews:

I've had one instance recently on a Port of Oakland job where I've had extreme difficulty with a set of inspectors and have been advised to consider it discriminatory but that's kind of a hard call This particular batch of inspectors just had the mindset that if I said so it must be the opposite of the way it should be. It was very difficult to deal with. I've had other people tell me that it was clear discrimination and because they didn't think a woman had any place in that. I don't know, I find it hard to accept that as a blanket theory but that could be the case [I]f I had an explanation or potential solution, he would be completely unreceptive to that where one of the other contractors — if they encountered a problem with their work — they could propose a solution or explain to the guy what they were going to do and have him accept it or whatever — discuss it at least and get the problem resolved. With my stuff, if I told him what I intended to do or suggested a way to make their requirement work, it would hit a dead end every time.

An African American contractor who has experienced a negative attitude from Port staff stated that the Port has historically had bad relationships with the African American community:

The Port of Oakland has always been insensitive to Black contractors. We were trying to encourage them many years ago not only to adopt the participation, but also to force their tenants to be sensitive because there are a lot of tenants up and down that port who are not sensitive to Blacks and local people from where a lot of dollars come. At that time, that was the second largest container port in the nation. I don't know where it stands now but, in my opinion, I don't think the Port is doing any better now than they were then.

Other M/WBEs stated that because of perceived political relationships of the Port they have lost business on more than one occasion. One woman who worked with the Port stated that particular contracts were suddenly rescinded because of a supposed relationship between a Port official and the union. When she complained she was offered smaller contracts and after those were entered into they were eventually reduced with no recourse offered. Although she has continued to make attempts to develop a relationship with Port, staff members have not responded to her efforts:

I am doing business with the Port of Oakland at the present. It's a small contract but we had the larger contract and they took it from us and said it was a "union thing." They promised the union that they would use union employees and we are not union employees so they've taken it away from us. Because of the fuss that we put up, they gave us a smaller contract and then they take that contract and cut it in half. So, I'm just a little, you know, peeved with the Port of Oakland right now. We are still trying to do more business in the purchasing end of it and we're doing very little. It's their problem with the Purchasing Agent. We are trying to iron those problems

TABLE 4.2
SUMMARY OF FINDINGS CONCERNING DISCRIMINATION
AGAINST M/WBEs

Type of Evidence	African Americans	Asian Americans	Hispanic Americans	Native Americans	Caucasian Women
Have M/WBE interviewees experienced difficulty breaking into a contracting network or any network that provides equal access to business opportunities or aids in business development? (Ex. Good Old Boy's Network)	Yes	Yes	Yes		Yes
Have M/WBEs experienced racial or gender discrimination?	Yes	Yes			Yes
Have M/WBEs experienced physical or sexual harassment or ostracism during the course of running their business?	Yes	Yes	Yes		Yes
Have M/WBEs experienced difficulty in obtaining bid information?	Yes	Yes			Yes
Have M/WBEs experienced pressure to reduce their bid or prices on a project?	Yes	Yes			

TABLE 4.2
SUMMARY OF FINDINGS CONCERNING DISCRIMINATION
AGAINST M/WBEs

Type of Evidence	African Americans	Asian Americans	Hispanic Americans	Native Americans	Caucasian Women
Have M/WBEs experienced resentment or unfair treatment due to their participation in or identification with an affirmative action program?	Yes	Yes			Yes
Have M/WBEs felt pressure to conceal or disguise the fact of minority or female ownership in order to fare better in sales and marketing efforts?	Yes				Yes
Have M/WBE interviewees experienced difficulty in obtaining financing and/or credit to develop or sustain their businesses?	Yes	Yes	Yes	Yes	Yes
Have M/WBE interviewees experienced difficulty in obtaining bonding and insurance?	Yes	Yes	Yes	Yes	Yes
Have M/WBE interviewees experienced late payment of invoices, leading to possible jeopardy of credit and difficulty in obtaining loans?	Yes	Yes		Yes	Yes

TABLE 4.2
SUMMARY OF FINDINGS CONCERNING DISCRIMINATION
AGAINST M/WBEs

Type of Evidence	African Americans	Asian Americans	Hispanic Americans	Native Americans	Caucasian Women
Have M/WBE interviewees experienced difficulty in obtaining certification and recertification for their firms? (Certification difficulties include excessive paperwork requirements).	Yes	Yes			Yes
Have M/WBEs experienced difficulty when trying to work with Oakland City Managers?	Yes	Yes			Yes
Have M/WBEs experienced barriers to obtaining or successfully completing contract work due to public agency staff?	Yes	Yes			Yes
Have M/WBEs lost a possible business opportunity as a result of bid shopping?	Yes	Yes			Yes
Have M/WBEs experienced retaliation (from either prime contractors or public agencies) when complaining about unfair treatment?	Yes	Yes	Yes		Yes

TABLE 4.2
SUMMARY OF FINDINGS CONCERNING DISCRIMINATION
AGAINST M/WBEs

Type of Evidence	African Americans	Asian Americans	Hispanic Americans	Native Americans	Caucasian Women
Do M/WBEs hold themselves up to higher standards to avoid criticism from majority colleagues?	Yes				Yes
Have M/WBEs experienced a reduction of work or cancellation of a contract?	Yes	Yes	Yes		Yes
Have M/WBEs benefitted from affirmative action programs?					Yes

TABLE 4.3
SUMMARY OF FINDINGS CONCERNING DISCRIMINATION
AGAINST M/WBEs IN THE OAKLAND REDEVELOPMENT AGENCY

Type of Evidence (Oakland Redevelopment Agency)	African Americans	Asian Americans	Hispanic Americans	Native Americans	Caucasian Women
Have M/WBE interviewees experienced difficulty obtaining bid notification and/or information?	Yes	Yes			Yes
Have M/WBEs experienced difficulties with agencies' failures to adequately monitor M/WBE program requirements?	Yes				
Have M/WBEs experienced a reduction of work, cancellation of the work, or pressure to reduce their fees after being awarded a contract?	Yes				

which contractors normally obtain business, and the effective monitoring of the affirmative action programs designed to remedy racial and gender discrimination in the market area.

TABLE 4.2
SUMMARY OF FINDINGS CONCERNING DISCRIMINATION
AGAINST M/WBEs

Type of Evidence	African Americans	Asian Americans	Hispanic Americans	Native Americans	Caucasian Women
Have M/WBE interviewees experienced difficulty breaking into a contracting network or any network that provides equal access to business opportunities or aids in business development? (Ex. Good Old Boy's Network)	Yes	Yes	Yes		Yes
Have M/WBEs experienced racial or gender discrimination?	Yes	Yes			Yes
Have M/WBEs experienced physical or sexual harassment or ostracism during the course of running their business?	Yes	Yes	Yes		Yes
Have M/WBEs experienced difficulty in obtaining bid information?	Yes	Yes			Yes
Have M/WBEs experienced pressure to reduce their bid or prices on a project?	Yes	Yes			

TABLE 4.2
SUMMARY OF FINDINGS CONCERNING DISCRIMINATION
AGAINST M/WBEs

Type of Evidence	African Americans	Asian Americans	Hispanic Americans	Native Americans	Caucasian Women
Have M/WBEs experienced resentment or unfair treatment due to their participation in or identification with an affirmative action program?	Yes	Yes			Yes
Have M/WBEs felt pressure to conceal or disguise the fact of minority or female ownership in order to fare better in sales and marketing efforts?	Yes				Yes
Have M/WBE interviewees experienced difficulty in obtaining financing and/or credit to develop or sustain their businesses?	Yes	Yes	Yes	Yes	Yes
Have M/WBE interviewees experienced difficulty in obtaining bonding and insurance?	Yes	Yes	Yes	Yes	Yes
Have M/WBE interviewees experienced late payment of invoices, leading to possible jeopardy of credit and difficulty in obtaining loans?	Yes	Yes		Yes	Yes

TABLE 4.2
SUMMARY OF FINDINGS CONCERNING DISCRIMINATION
AGAINST M/WBEs

Type of Evidence	African Americans	Asian Americans	Hispanic Americans	Native Americans	Caucasian Women
Have M/WBE interviewees experienced difficulty in obtaining certification and recertification for their firms? (Certification difficulties include excessive paperwork requirements).	Yes	Yes			Yes
Have M/WBEs experienced difficulty when trying to work with Oakland City Managers?	Yes	Yes			Yes
Have M/WBEs experienced barriers to obtaining or successfully completing contract work due to public agency staff?	Yes	Yes			Yes
Have M/WBEs lost a possible business opportunity as a result of bid shopping?	Yes	Yes			Yes
Have M/WBEs experienced retaliation (from either prime contractors or public agencies) when complaining about unfair treatment?	Yes	Yes	Yes		Yes

TABLE 4.2
SUMMARY OF FINDINGS CONCERNING DISCRIMINATION
AGAINST M/WBEs

Type of Evidence	African Americans	Asian Americans	Hispanic Americans	Native Americans	Caucasian Women
Do M/WBEs hold themselves up to higher standards to avoid criticism from majority colleagues?	Yes				Yes
Have M/WBEs experienced a reduction of work or cancellation of a contract?	Yes	Yes	Yes		Yes
Have M/WBEs benefitted from affirmative action programs?					Yes

TABLE 4.3
SUMMARY OF FINDINGS CONCERNING DISCRIMINATION
AGAINST M/WBEs IN THE OAKLAND REDEVELOPMENT AGENCY

Type of Evidence (Oakland Redevelopment Agency)	African Americans	Asian Americans	Hispanic Americans	Native Americans	Caucasian Women
Have M/WBE interviewees experienced difficulty obtaining bid notification and/or information?	Yes	Yes			Yes
Have M/WBEs experienced difficulties with agencies' failures to adequately monitor M/WBE program requirements?	Yes				
Have M/WBEs experienced a reduction of work, cancellation of the work, or pressure to reduce their fees after being awarded a contract?	Yes				

TABLE 4.4
SUMMARY OF FINDINGS CONCERNING DISCRIMINATION
AGAINST M/WBEs IN THE PORT OF OAKLAND

Type of Evidence (Port of Oakland)	African Americans	Asian Americans	Hispanic Americans	Native Americans	Caucasian Women
Have M/WBE interviewees experienced difficulty obtaining bid notification and/or information?	Yes	Yes			Yes
Have M/WBE interviewees experienced difficulties, lack of cooperation and/or insensitive attitudes when trying to work with and/or obtain bids from Oakland's city managers?	Yes	Yes			Yes
Have M/WBEs experienced difficulties with agencies' failures to adequately monitor M/WBE program requirements?	Yes				
Have M/WBES experienced inadequate lead time from the primes to bid or perform Port jobs?				Yes	

5

PROGRAM RECOMMENDATIONS

I. OVERVIEW

The statistical analysis of this report demonstrates that the ratio between the current M/WBE utilization and M/WBE availability in the City's and Redevelopment Agency's market area reveals significant statistical disparities with respect to each of its three contracting categories. The anecdotal findings support and supplement the statistical disparity findings. The oral history analysis provides clear evidence of routine patterns and practices of discrimination against minority and women business owners in the market area. This discrimination is perpetrated by many sources, including individuals, business institutions, and the City and the Redevelopment Agency's prime contractors for whom M/WBEs work.

This section contains recommendations for modifications to the City and Redevelopment Agency's M/WBE program and general contracting processes. The recommendations have been proposed to address the barriers that M/WBEs encountered as described in this report.

Both race conscious and race neutral recommendations have been included. Race neutral recommendations are proposed to improve access to public contracting programs to help all businesses and especially small businesses, new businesses, and other disadvantaged businesses. Race and gender conscious measures such as goals and preferences have also been recommended because disparate treatment due to a business owner's race or gender has been documented in this study.

These recommendations are intended to strengthen the City's and Redevelopment Agency's M/WBE existing programs. However, it is not within the scope of this report to address the implementation of the recommendations. Rather, these recommendations are intended to be used to formulate policy and implementation procedures.

II. COVERAGE OF PROGRAM

Any program adopted by the City and the Redevelopment Agency should address all types of contracting, including prime contracting, subcontracting, and procurement of goods,

services, loans and development agreements. The City and Redevelopment Agency should be careful to implement procedures to ensure that amendments, change orders, and contract renewals are all covered by this program.

A. Development Agreements

Specific requirements should be implemented for development disposition agreements and loans provided by the redevelopment agency. These standards should include:

- Requiring developers to present to the City Council, for approval, a plan for M/WBE participation prior to execution of the development agreement.
- Requiring developers to attain appropriate M/WBE goals.
- Monitoring developers' M/WBE participation on projects.
- Imposing penalties on developers that fail to obtain the designated level of participation.

B. Small Local Business Enterprise Program

- Reduce the maximum gross revenue to qualify as small local business enterprises (SLBE) so that they will correspond with the businesses size range in the local community.
- Small business goals should be set for prime contracts.
- Contracting thresholds should be established that would make contracts under \$50,000 available to small contractors without formal competitive bidding or insurance requirements.
- At least two of the three bids required for these small informal contracts would be solicited from a local small minority- and a woman-owned business.
- The City and Redevelopment Agency should consider earmarking certain projects for SLBE participation, and bid these projects competitively.
- Contracts should be broken into smaller units where feasible.

III. GOALS AND PREFERENCES

A. Race Conscious Remedies

The study found statistically significant disparity in the utilization of several groups in various industries. Where the study findings document discrimination, race conscious remedies should be employed.

B. Goals

In light of the evidence presented in this study which supports the conclusion that minority participation in City and Redevelopment Agency contracts is limited by active and passive discriminatory business practices, the City and Redevelopment Agency should establish race and gender goals to remedy the documented discrimination.

- Prime contract goals should be established for the gender and ethnic groups in the industries where there are statistically significant disparities.
- These goals should be established in accordance with the availability information provided as part of this report.
- For each ethnic and gender group accorded the race conscious remedy, contract specific goals should be set based on the current availability.
- A preference program should be established in construction and architectural and engineering services. Preference points should be given to prime contractors who have a minority joint venture partner.
- Contracts should be broken into smaller units to increase the opportunities for local businesses to bid as prime and subcontractor.
- Program goals should be updated periodically in accordance with current utilization and availability, and the goals should have a sunset provision.
- The goals should apply to contracts, purchase orders, development disposition agreements, and public improvement loans.
- Size standards should be instituted to determine when a business no longer needs the benefits of the program. Size standards should be developed for each industry, based on local market area.

- The goals should apply to change orders, amendments, and other modifications to the contract which increase contract value.

C. Periodic Review

The study findings do not support a race conscious remedy for all the minority and gender groups included in the existing M/WBE Program. However, the utilization documented through the study could be artificially inflated by the existing program goals. Therefore, the participation levels of the groups not included in the race conscious remedy should be reviewed at least annually. If a pattern of reduced utilization emerges, a disparity analysis should be undertaken to determine if the factual predicate exists to warrant a race conscious program.

Further study should be undertaken to determine if there is a statistically significant disparity in the subcontracting program.

D. Sunset Provisions

Goals established to remedy identified discrimination should be prescribed for a fixed term. They should be used as a remedy where there is statistically significant evidence of discrimination. After the goals have been in place for a reasonable period, the findings should be updated to determine if the race conscious remedy eradicated the documented discrimination. Five to seven years should be considered a reasonable time for the sunset provision.

IV. SMALL BUSINESS/SHELTERED MARKET PROGRAM

A. Create a M/WBE/SLBE Sheltered Market for Contracts under \$100,000

A two-stage sheltered market will increase the opportunity for M/WBEs and SLBEs to compete for competitively bid contracts. It can also correct the documented disparity and build the capacity of minority- and woman-owned businesses to bid as primes. This sheltered market program would target informally awarded contracts and small contracts awarded through the formal bid process.

There is evidence that M/WBEs may be infrequently utilized on informal contracts. These contracts are the most accessible to minority- and woman-owned businesses because competition for them is limited and it is controlled by the buyer.

Under a small business/sheltered market program, a substantial percent of informal and small contracts would be reserved for qualifying contractors. Participants would be selected from the pool of certified M/WBEs and SLBEs. The program would require that the participants take part in business, financial, and technical assistance programs with the goal of enhancing business skills. After a minimum of two years in the program, participants would be graduated into the small business level that would include larger contracts and increased competition.

B. Reduce Size of Contracts

Large prime contracts were found to deter M/WBE participation. The City should attempt to design projects that are smaller in size, and consider dividing up larger items of work into a series of smaller prime contracts.

V. OUTREACH

A. Outreach Methods

The City and the Redevelopment Agency relies heavily on prime contractors to notify subcontractors of contracting opportunities. However, M/WBEs report difficulty obtaining notice of bid opportunities and exclusion from networking circles. There is also some reluctance to do business in the City and the Redevelopment Agency. To alleviate such barriers, the City and Redevelopment Agency should enhance its outreach methods and procedures to effect greater access to bid information. It should establish a staff position whose primary responsibilities include outreach to M/WBEs and SLBEs.

Printed notices, electronic (on-line) services, telephone hot-lines, and official bulletin boards are several methods that should be employed to disseminate bid and contract information to M/WBEs. It is important to ensure that notices of bid and contracting opportunities are current and are disseminated to M/WBEs in a timely manner.

- Regularize the release of contract information*

A specific day should be designated for the release of new and updated bid and contract information. Formal, printed information could be released monthly. Critical information such as any goals, the contact person, and specifications should be included in all public notices.

- *Targeted mailings*

M/WBEs should be notified via targeted mailings of all contracting opportunities for which they are qualified to compete. The City's and Redevelopment Agency's certified list should be used as the source for locating contractors.

- *Publish a contracts register*

The City and Redevelopment Agency should publish a detailed and descriptive contracts register, and distribute it to subscribers. Contract award information and contracts approved for exemption should be included. This contracts register should be available to all businesses, which would pay a nominal fee for the publication.

- *Utilize the ABAG Contracting Exchange*

In conjunction with the newsletter, the City and Redevelopment Agency could provide bid information through the Associated Bay Area Governments (ABAG) Contracting Exchange bulletin board.

- *Develop a telephone hotline*

The City and Redevelopment Agency should develop and maintain a contracting opportunities telephone hotline. The hotline should be maintained with the most current information so that businesses learn of new contracts listed within the previous 48 hours. Emergency contracts should also be listed on the hotline.

B. Improved Targeted Outreach to Ethnic Business Owners

Ethnic business owners have experienced difficulty breaking into the business network that provides access to business opportunities and aids to business development. They have also experienced ostracism during the course of running their businesses. Asian and Hispanic business owners have expressed language barriers to information about contracting and M/WBE programs. It is suspected that many more minority- and woman-owned businesses exist than are currently certified by the City and the Redevelopment Agency or that appear in M/WBE directories.

A comprehensive outreach campaign should be implemented the first year of the program.

C. Improved Outreach to Women Business Owners

Women business owners, both Caucasian and ethnic, have experienced difficulty breaking into the business network, racial discrimination, ostracism, and difficulty obtaining needed business resources. It is also suspected that many women owned businesses are not certified or listed in M/WBE directories because they are deterred by perceived barriers to equal access.

A comprehensive outreach campaign should also be implemented the first year of the program.

VI. CERTIFICATION

Only M/WBEs that can perform a commercially useful function should be credited toward the participation goals. Therefore, standards should be developed to determine whether certification applicants can perform a commercially useful function in each industry for which they seek certification.

Because there appears to be confusion about the standard for SLBE certification, the standard for such certification should be clarified in writing. The standard should be uniformly applied to each certification.

The City and Redevelopment Agency should consider streamlining the certification process. Only documentation germane to determining ownership and control should be required for a complete application. The City and Redevelopment Agency should also consider accepting the certification of any agency whose certification standards and procedures comport with Chapter 49 of the Codes of Federal Regulations, Part 23. The City and Redevelopment Agency should also adopt a process that aims to have both initial certification and recertification decisions completed within 30 days of receipt of a complete application.

The City and Redevelopment Agency should also implement a formal process for addressing complaints relating to companies' M/W/SLBE certification status. A written response should be required to such complaints, and the complainant should have the option of having its grievances heard by a fair and neutral forum.

VII. MONITORING AND REPORTING UTILIZATION

The City and Redevelopment Agency should undertake regular monitoring and reporting of *actual* M/WBE utilization by the prime contractors and subcontractors on all City and Redevelopment Agency contracts. This can be accomplished through the following procedures:

- Develop a uniform system to track and monitor, in all departments, payments and modifications of the contract after the award.
- Proof of subcontracting payment should be required with every invoice payment request.
- Generate quarterly reports of utilization by the City and Redevelopment Agency through an automated computer system with the capability to track data by type of contract, ethnicity, gender, firm name, award date, payment amount, and City and Redevelopment Agency department. The reporting form used by each reporting developer and prime contractor should mirror the database used by the City.
- Ensure that quarterly reports reflect all change orders, amendments, and substitutions of firms.
- Make quarterly reports readily available to interested parties.
- Require prime contractors to submit the contract for each subcontractor listed on their bid within 30 days of receiving a signed contract with the City and the Redevelopment Agency and before payment is released on their first invoice.
- Publish award information in the contracts register. This would inform M/WBEs who were listed, but not utilized on City and Redevelopment Agency contracts, of potential compliance violations.

VIII. DISSEMINATION OF INFORMATION

The City and Redevelopment Agency should institute formalized processes whereby contractors and subcontractors will become aware of the requirements of the program and of all contracting opportunities. To achieve this goal, the City and Redevelopment Agency should take the following measures:

- Require that information about all contracts valued over a certain amount be sent to the Office of Contract Compliance or another central office so that contractors will

know where to obtain information. Include in this all bid information, all M/WBE program requirements (e.g. goals) that apply to all change orders, amendments, and other modifications to the contract by the prime contractor on all contracts, not just construction contracts.

- Notify all subcontractors of all amendments or change orders.
- Develop a checklist of compliance requirements to provide to contractors at pre-award contract meetings.
- Educate prime contractors and subcontractors about pre-award and post-award program requirements.

IX. STAFFING/ADMINISTRATIVE RESOURCES

A. Responsibility of Staff

There should be a clear definition of the roles of all City and Redevelopment Agency staff, including those in the Contract Compliance Office, in the implementation of the M/WBE policy and procedures. The following recommendations are guidelines for defining staff responsibilities regarding the M/WBE program:

- There should be adequate staff and resources in the Contract Compliance Office to implement M/WBE policy and procedures. If necessary, additional funding should be allocated.
- Contract Compliance staff should have authority and responsibility for monitoring City compliance with the M/WBE policy and procedures.
- Contract Compliance staff should play an integral role in all phases of the City and Redevelopment Agency contracting process. This includes involvement with the assessment of how project specifications can best maximize M/WBE contacting opportunities, the evaluation of M/WBE contractor bid commitments, and contract monitoring.

B. Staff Development

- Staff should be trained to design smaller contracts in discrete segments so that contracts can be reduced in size.

- Staff should be trained on M/WBE programs elements, objectives and procedures and should be held accountable for compliance with the requirements. This training could become a part of future staff's orientation.
- Compliance performance should be incorporated into the employee performance reviews. Compliance objectives should be established for key personnel and non-compliance should be cited in staff personnel records.

X. COMPLIANCE AND ENFORCEMENT PROCEDURES

The City's and the Redevelopment Agency's experience demonstrates that measures need to be taken to ensure that listed M/WBEs are actually utilized. Compliance is the fulcrum of a successful M/WBE utilization program. To that end, the City and Redevelopment Agency should develop effective enforcement procedures and establish appropriate levels of authority. The following recommendations are made toward that end:

A. Prompt Payment

- Streamline the invoice processing procedures so that prime contractors can be paid within 20 days of submitting invoices.
- Impose a penalty upon prime contractors if they fail to pay subcontractors within 10 days of payment by the City and Redevelopment Agency.
- Issue two-party checks to prime contractors who habitually pay their subcontractors late.
- Evaluate staff for compliance with prompt payment standards

B. Good Faith Compliance

- Empower the Contract Compliance Supervisor with the authority to temporarily suspend or intervene in the contract selection process to correct contracting practices which hinder equal business opportunities for M/WBEs. Such practices include failure to follow proper procedures regarding advertisement of contracting opportunities and selection of contractors.
- Establish written standards for evaluation of good faith submittals to ensure consistent application criteria.

C. Non-Discrimination Declaration

Establish a declaration of non-discrimination for all businesses providing goods and services to the City and Redevelopment Agency. Expand the bid review process to include an examination of the quotes provided the protected classes to determine if they are being quoted higher prices for supplies and equipment than other bidders.

D. Standardized Proposal and Bid Reviews

- Establish written selection criteria for architectural and engineering contracts.
- Develop City and Redevelopment Agency forms with standard proposal and bid review criteria.
- Require contractor selection personnel to sign review forms.
- Make selection process and the signed review forms available for public inspection.

E. Penalties

The City and Redevelopment Agency should institute a policy of progressive discipline. The severity of the penalty should be raised or lowered in proportion to the severity and frequency of the offense/breach.

- Require subcontractor's consent to be listed. The prime contractor should be penalized if a subcontractor has been listed without consent.
- Penalize falsification of subcontractors' bids. The prime contractor should be penalized if a subcontractor's bid is falsified. The City and Redevelopment Agency should refer fraudulent firms for prosecution.
- Penalize failure to comply with contracts' terms and conditions. Prime contractors should be fined for non-compliance with contract terms and conditions. Attach penalties to failures to meet utilization goals. The City and Redevelopment Agency should authorize the compliance officer to enforce program compliance.
- Fine contractors for non-approved substitutions. Prime contractors should be fined if subcontractor substitutions are made without the City or Redevelopment Agency's approval.

- Penalize contractors if M/WBE subcontractors are underutilized. Prime contractors should be penalized if subcontractors are underutilized without City or Redevelopment Agency approval. Standard contract language should include provisions requiring prime contractors to maintain the level of participation represented at the start of a contract or pay liquidated damages.
- Incorporate contract language regarding liquidated damages. The City, the Redevelopment Agency, and the M/WBE program are injured when a contract or a portion of the contract designated for a M/WBE is not actually performed by a M/WBE. To deter unauthorized substitutions (and program non-compliance in general), the City and Redevelopment Agency should include provisions in the contract stipulating that in the event of a breach of contract relating to M/WBE requirements, the contractor shall be responsible for liquidated damages equal to the dollar value of the M/WBE utilization lost to the City or Redevelopment Agency. In addition, the contractor should be held responsible for the additional administrative and investigative costs of such a breach.
- Penalize suppliers that discriminate against minority and women in equipment and supplier pricing.

F. Grievance Process

- Incorporate bid protest provisions into bid solicitation documents to implement a formal process for addressing bid protests. A timely written decision should be required in response to a formal bid protest. The complainant should be entitled to have his or her matter heard by a fair and neutral body.
- Empower the Contract Compliance Supervisor with the authority to require alternative dispute resolution to resolve contract and compliance related disputes between prime contractors and M/WBE subcontractors.
- Establish formal procedures to protest an intent to award and non-compliance with the M/WBE requirements. A standard for a third party challenge to a M/W/SBE certification should be established.

XI. FINANCIAL ASSISTANCE

A. Financial Assistance

As presented above, M/WBEs reported a great deal of difficulty with financial institutions even though the City and Redevelopment Agency has established a financial assistance program. Therefore, the City and Redevelopment Agency should consider supplementing its current program and implementing more aggressive measures. This program may include

the City and Redevelopment Agency guaranteeing a percentage of certain loans to M/WBEs meeting specific qualifications. The City and Redevelopment Agency could also request that local banks with which the City and Redevelopment Agency holds accounts establish comprehensive financing programs for small local firms, particularly M/WBEs.

The City and Redevelopment Agency could also establish a clearinghouse for bonding and financial information so that contractors have access to information about programs that provide bonding and financial assistance to small businesses and/or M/WBEs.

The City and Redevelopment Agency could also provide M/WBEs further assistance in creating business plans, financial statements, and other information required by lending institutions.

B. Bonding Assistance

The City and Redevelopment Agency should consider methods to lower its bonding limits since many M/WBEs report that these are a significant barrier to contracting. Methods that may be used include reducing the size of contracts into smaller units or segmenting a large contract so that once a portion of the work is completed, the bond can be rolled over into the next portion. This has the potential affect of lowering the M/WBEs' bond rates.

Bonding rates may also be reduced if the City and Redevelopment Agency were to negotiate guarantee agreements with a pool of local bonding and surety companies, or develop a "self-bonding" program for contracts or projects on which the City and Redevelopment Agency has determined that a number of M/WBEs will be available to participate.

XII. CONCLUSION

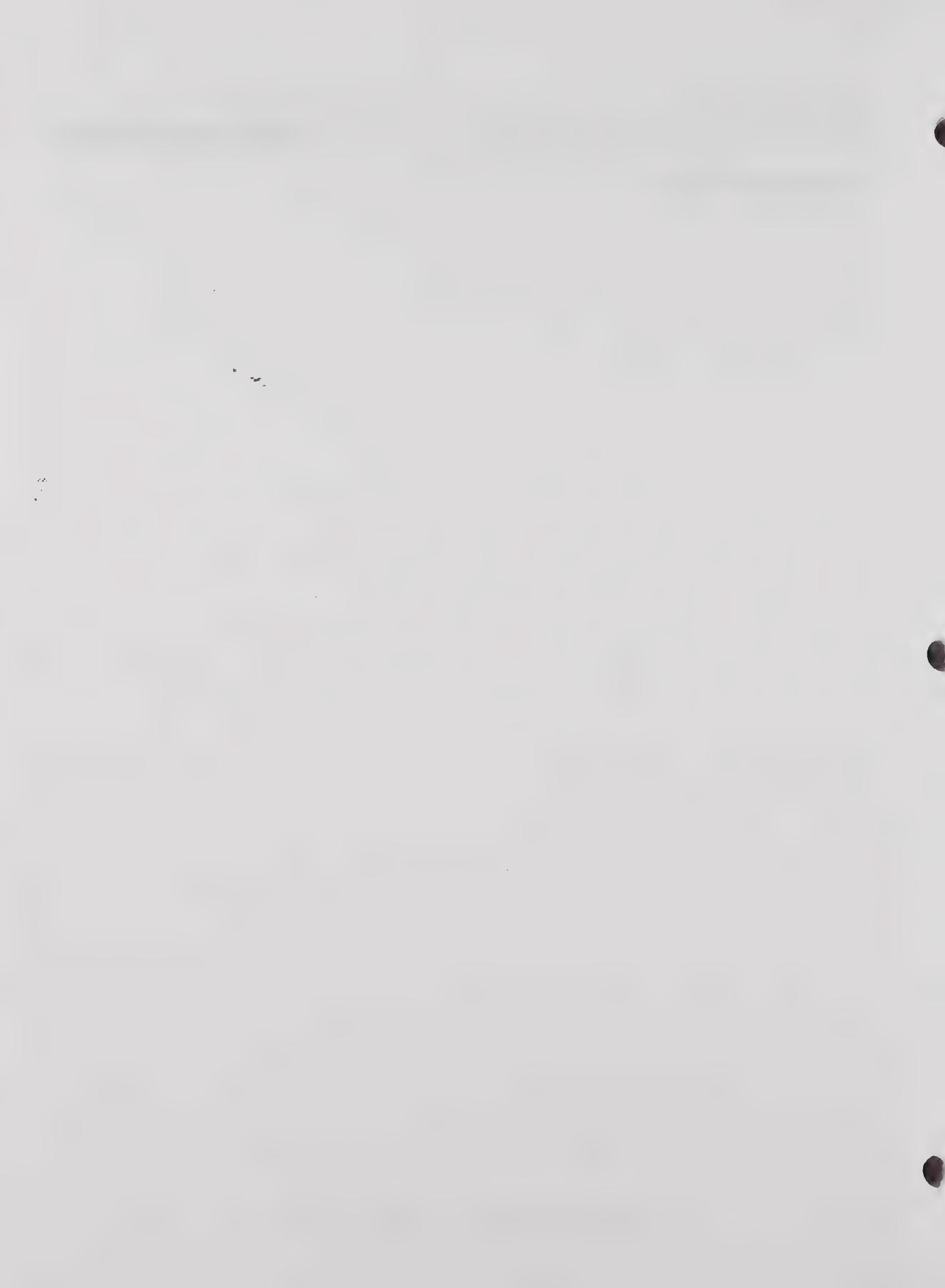
These program recommendations have been formulated to address the barriers encountered by M/WBEs in the City and Redevelopment Agency's market area. The statistical analysis of this report has revealed significant statistical disparities with respect to each of the three public contracting categories in the ratio between the City's and Redevelopment Agency's current M/WBE utilization and current M/WBE availability in the market area.

The oral history analysis demonstrates that although mechanisms are in place to help M/WBEs overcome historical barriers to contracting opportunities, manipulations by prime contractors and public entities to circumvent the systems allegedly put in place to bring minority and women business owners into the marketplace in accord with their positions in the general business have prevented their equal participation.

Based upon the evidence amassed in this study, the City of Oakland and the Redevelopment Agency would have justification for continuing to implement a M/WBE program with goals

for M/WBE participation aimed at eliminating systemic barriers to equal opportunity in the areas of contracting and procurement. The above recommendations also seek to allow M/WBEs to overcome the reported barriers that they have encountered.

Appendix



Availability Resources

Public Agencies

BART

800 Madison Street, P.O. Box 12688
Oakland, CA 94604-2688
510-287-4839

City of Alameda

Engineering Division
Room 207-City Hall
2263 Santa Clara Avenue
Alameda, CA 94501-4455
510-748-4510

City of Albany

1000 San Pablo Avenue
Albany, CA 94706
510-528-5760

City of Antioch

Deputy Director of Public Works,
P.O. Box 130
Antioch, CA 94509
510-779-7055

City of Berkeley

2180 Milvia
Berkeley, CA 94704
510-644-6580

City of Brentwood

708 Third Street
Brentwood, CA 94513
Engineering Department
510-634-6920
Public Works Maintenance
510-634-6928

City of El Cerrito

10890 San Pablo Avenue
El Cerrito, CA 94530
(510) 215-4310

City of Fremont

Engineering Department
510-494-4670
Finance Department
510-494-4765

City of Hayward

25151 Clawiter Road
Hayward, CA 94545-2731
Contract Compliance
510-293-5177
Engineering Department
510-293-5000

City of Hercules

Engineering Department
111 Civic Drive
Hercules, CA 94547
510-799-8242

City of Livermore

Engineering Department
3589 Pacific Avenue
Livermore, CA 94550
510-373-5240

City of Martinez

Public Services (Works) Department,
525 Henrietta Street
Martinez, CA 94553
510-736-9384

City of Newark

37101 Newark Blvd.
Newark, CA 94560
Engineering Department
510-790-7222
Engineering Dept.
510-793-1400

City of Oakland

One City Hall Plaza
Oakland, CA 94612
510-238-3970

City of Pinole

Public Works Assistant Director
2121 Pear Street
Pinole, CA 94564
510-724-9010

City of Richmond

Contract Compliance/Affirmative Action Unit
2600 Barrett Avenue, Room 301
Richmond, CA 94804
510-307-8017

City of San Leandro
Personnel
Public works, ext 3
Finance Department, ext 2
835 East 14th Street
San Leandro, CA 94577
510-577-3200 ext. 4

County of Alameda
Public Works
440 MacArthur Blvd
Oakland, CA 94619
(510) 670-5436

East Bay Municipal Utility District
P.O. Box 24055
Oakland, CA 94623
510-835-3000

Database Publishing Company
P.O. Box 7440
Newport Beach, CA 92658
(800) 888-8434

Port of Oakland
Minority Business Outreach
530 Water Street
Oakland, CA 94607-3746
510-272-1316

University of California/Office of Business and
Employment Affirmative Action
300 Lakeside Drive, 9th Floor
Oakland, CA 94612-3550
510-987-0846

University of California/Office of Small Business
Development
6701 San Pablo Avenue
Berkeley, CA 94720
510-642-8600
Professional Services/Construction, 510-643-5104

Trade Associations

American Institute of Architects
East Bay Chapter
499 Fourteenth Street, Suite 210
Oakland, CA 94612
510-464-3600

Asian, Inc. and Council of Asian-American
Associations
1670 Pine Street
San Francisco, CA 94109
415-928-5910

Association of Building Contractors
4026 Third St.
San Francisco, CA 94124
415-562-0292

Association of General Contractors
1350 Treat Boulevard Suite 450
Walnut Creek, CA 94596
510-937-2422

Bechtel National, Inc.
P.O. Box 193965
San Francisco, CA 94119
(415) 768-1451

Blue Book of Building
and Construction
5820 Stoneridge Mall, 117
Pleasanton, CA 94588
510-847-9672

Building Industry Association
of Northern California
(BIANC)

CHISPAS
3065 Richmond Parkway, Suite 105
Richmond, CA 94808
(510) 222-6622

East Bay Asian Business and Building Professionals
500 East Eighth Street
Oakland, CA 94606
510-839-8688

East Bay Small Business Development Center
2201 Broadway, Suite 701
Oakland, CA 94612
510-893-4114

Hispanic Chamber of Commerce
P. O. Box 1709
Oakland, CA 94604
510-536-4477

The Korean Times
679 Bryant Street
San Francisco, CA 94107
415-777-1183

Minority Business & Professional Directory
P.O. Box 77226
San Francisco, CA 94107
510-874-7740

Minority Entrepreneurs Corp. Alliance
301 31st St
Richmond, CA 94806
510-620-0754

Northern California Engineering Contractors Assn., Inc.

Northern California Supplier Development Council
575 Market Street, Suite 1700
San Francisco, CA 94105
415-894-0022

Oakland Metropolitan Chamber of Commerce
475 14th Street
Oakland, CA 94612-1903
510-874-4800

Oakland Chinatown Chamber
Of Commerce
Pacific Renaissance Plaza
388 Ninth Street, Suite 258
Oakland, CA 94607
510-893-8979

Oakland Commerce Corporation
333 Hegenberger Road, Suite 306
Oakland, CA 94621
510-632-1238

Pacific Bell
Minority & Women's Business Enterprise
2600 Camino Ramon, Room 1E050
San Ramon, CA 94583
510-823-0470

Richmond Chamber of Commerce
3925 MacDonald Ave.
Richmond, CA 94805
510-234-3512

Richmond Human Relations Commission
2600 Barrett Avenue
Richmond, CA 94804
510-307-8017

Spanish Speaking Citizens' Foundation
1470 Fruitvale Avenue
Oakland, CA 94601
510-261-7839

Turner Construction Co.
1587 Franklin Street, Suite 1500
Oakland, CA 94612
510-645-0288

Vietnamese Chamber of Commerce
345 Ninth Street, Suite 301
Oakland, CA 94607
510-465-6464

Women Construction Owners & Executives, USA
2833 3rd St.
San Francisco, CA
415-768-1451

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